



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 31 जनवरी, 2025/11 माघ, 1946

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Dated, the 9th December, 2024

No.: LEP-E/1/2024, 2024 .—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication

234—राजपत्र / 2025—31—01—2025

(12613)

of awards of the following cases announced by **Presiding Judge, Labour Court—cum—Industrial Tribunal, Dharamshala**, on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	149/17	Sita Devi	G.M., M/s Ranger Breweries	24-06-2024
2.	50/21	Robin Saini & other	Factory Manager, M/s Inox Wind	28-06-2024
3.	192/17	Surinder Kumar	Manager Ranger Breweries Ltd.	29-06-2024
4.	162/17	Kulwinder Kaur	Manager Ranger Breweries Ltd.	29-06-2024
5.	58/20	Rachh Pal	D.M. Forest Corporation Hamirpur	29-06-2024
6.	61/20	Parkash Chand	-Do-	29-06-2024
7.	60/20	Gungru Ram	-Do-	29-06-2024
8.	56/20	Suresh Kumar	-Do-	29-06-2024
9.	57/20	Daljeet Singh	-Do-	29-06-2024
10.	59/20	Hem Raj	-Do-	29-06-2024
11.	80/18	Man Singh	C.M.O. Mandi & others	29-06-2024

By order,

Sd/-
(PRIYANKA BASU INGTY, IAS).
Secretary (Lab. Emp. & O.P.).

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT—CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 149/2017

Date of Institution : 21-6-2017

Date of Decision : 24-6-2024

Smt. Sita Devi w/o Shri Avtar Singh, r/o c/o Comrade Jagat Ram, Village and Post Office Dehlan, Tehsil and District Una, H.P. . . *Petitioner.*

Versus

The General Manager, M/s Rangar Breweries Limited, 1 & 130 Industrial Area, Mehatpur, District Una, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For Respondent : Mr. Anubhav Walia, Ld. Adv.

AWARD

The reference as follows has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Smt. Sita Devi w/o Shri Avtar Singh, r/o c/o Comrade Jagat Ram, Village and Post Office Dehlan, Tehsil and District Una, H.P. by the General Manager, M/s Rangar Breweries Limited, 1 & 130 Industrial Area, Mehatpur, District Una, H.P. *w.e.f.* 28-01-2014 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that the petitioner was engaged as helper in the year 2009 by way of verbal order of the respondent. She continued to work in the factory/industry till her services were allegedly unlawfully terminated by the respondent management in the year 2012. It is asserted that while terminating the services of the petitioner no show cause notice or charge-sheet was issued regarding her misconduct for which she was being terminated. No notice under Section 25-F of the Act neither any compensation in lieu of retrenchment was paid. It is asserted that petitioner had completed more than 240 days in each and every calendar year for last 12 calendar months preceding her termination. The petitioner while raising an industrial dispute gave demand notice and forwarded the same to the Labour Inspector. The conciliation proceedings commenced, management filed reply to the demand notice and conciliation proceedings ended in failure as management refused to reinstate the services of the petitioner. It is alleged that while terminating the services of the petitioner, respondent did not follow the principle of 'last come first go' and while recruiting new workers opportunity of re-employment was not afforded to the petitioner, thus the respondent violated the provisions of Sections 25-G and 25-H of the Act. The termination of petitioner is alleged to be malafide. It is alleged that after her termination she remained unemployed and thus she is entitled for full back wages till her illegal termination. The petitioner also alleged that due to her illness or some ailment she was unable to report to work and after recovery of ailment she tried to work but the respondent refused stating that she was no more employee of the respondent. She further alleged that she was made to sign on few blank papers after signing these documents she was made entitled her salary, therefore she put her signatures in good faith on there documents. Petitioner prayed that her illegal termination may be set aside and she be reinstated with the respondent along-with full back wages, seniority and continuity in her service along-with cost of litigation.

3. The respondent by way of reply raised preliminary objections qua maintainability. It was asserted that the claimant/petitioner was not terminated but she left the job out of her own will. The claimant/petitioner worked with management upto 28-1-2014 and therefore there was no termination of services in the year 2012 as claimed in the petition. On merits, the averments made in the petition have been denied para-wise. It is mentioned that the petitioner had left the job out of her own accord. She approached the management on 13-8-2014 and took Rs. 2,138/- on account o full and final settlement of her claim under labour laws and executed Form-H. A false dispute is

now being raised on her behalf after 1¾ years with malafide intention to extract money from the management. In the light of these averments it is prayed that petition is to be dismissed.

4. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 15th July, 2022:—

1. Whether the act of termination of the services of the petitioner by the respondent *w.e.f.* 28-01-2014 is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*

Relief.

5. I have heard the learned Counsel for the respondent at length and records perused.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief. : Reference/Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2

7. Both these issue shall be taken up together for the purpose of adjudication.

8. The petitioner in the present case failed to appear before this court on 10-6-2024 despite being duly served. Perusal of the case file reveals that from the date issues were framed *i.e.* 15th July, 2022, no petitioner witnesses were produced by the petitioner. On 18th January, 2023 last opportunity for petitioner evidence was granted thereafter notice was issued to the petitioner as learned counsel pleaded no instructions. Prior to 10-6-2024 the petitioner was served in person on more than one occasion. Despite due service and knowledge of the proceedings she did not put her presence nor any Counsel/Authorized Representative appeared on her behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957.

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

9. It is argued by learned counsel for the respondent that the onus of proving the averments and allegations made in the claim petition presented on behalf of petitioner subject to the reference was on the petitioner. The petitioner failed to substantiate the averments made in the

petition by leading oral or documentary evidence in the court. The learned counsel has further submitted that considering the conduct of the petitioner and the fact that she is not able to substantiate the allegations by way of evidence the reference cannot be decided in accordance with prayer made in her claim petition.

10. The perusal of the case file shows that ample opportunities has been granted to the petitioner to appear before this court and produce evidence oral as well as documentary. She not only failed to produce the evidence but despite having knowledge of the proceedings failed to produce evidence and appear before this court hence she was proceeded ex-parte. The onus of proving the fact that termination of the services of the petitioner by the respondent *w.e.f.* 28-1-2014 was illegal and unjustified was on the petitioner. In absence of any evidence to this fact the issues No.1 and 2 cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

“22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Hon'ble Supreme Court in **M/s Haryana Suraj Malting Ltd. vs. Phool Chand**, AIR 2018 SC 2670 has observed thus under the statutory scheme the Labour Court/Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed ex-parte and pass an ex-parte award. The award, ex-parte or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

12. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to substantiate allegations by way of evidence accordingly issues No.1 and 2 cannot be decided in the favour of petitioner.

Issue No.3

13. The onus to prove this issue on the respondent. No evidence has been led on behalf of the respondent however considering the fact that the petitioner has failed to prove the averments made in the petition by way of evidence, the present claim petition is not maintainable.

Relief

14. In view of my findings on the issues no. 1 to 3 above, the claim petition is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 24th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 50/2021

Date of Institution : 12-3-2021

Date of Decision : 28-6-2024

1. Shri Robin Saini s/o Shri Suresh Kumar Saini, r/o Village Lower Arniala, P.O. Kotla Kalan, Tehsil & District Una, H.P.

2. Shri Vishal Sharma s/o Shri Satish Kumar, r/o VPO Raisari, Tehsil and District Una, H.P.

3. Shri Sonu Kumar s/o Shri Barfi Ram, r/o VPO Budhwar, Tehsil Bangana, District Una, H.P.

4. Shri Abhishek Kalia s/o Shri Janak Raj Kalia, r/o Village Rapho Muchlyan, P.O. Rapoh Missran, Tehsil Amb, District Una, H.P.

5. Shri Nikhil Kapila s/o Shri Kamal Devi Kapila, r/o VPO Ajouli, Tehsil and District Una, H.P. . . *Petitioners.*

Versus

The Employer/Factory Manager, M/s Inox Wind Limited, Plot No.I, Industrial Area, VPO Basal, Tehsil & District Una, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner(s) : Sh. Kumar Karan, Ld. Adv.

For Respondent : Sh. Anish J.P., Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the demands raised by (i) Shri Robin Saini s/o Shri Suresh Kumar Saini, r/o Village Lower Arniala, P.O. Kotla Kalan, Tehsil & District Una, H.P. (ii) Shri Vishal Sharma s/o Shri Satish Kumar, r/o VPO Raisari, Tehsil and District Una, H.P. (iii) Shri Sonu Kumar s/o Shri Barfi Ram, r/o VPO Budhwar, Tehsil Bangana, District Uan, H.P. (iv) Shri Abhishek Kalia s/o Shri Janak Raj Kalia, r/o Village Rapho Muchlyan, P.O. Rapoh Missran, Tehsil Amb, District Una, H.P. (v) Shri Nikhil Kapila s/o Shri Kamal Devi Kapila, r/o VPO Ajouli, Tehsil and District Una, H.P. (vi) Shri Yogesh Sharma s/o Shri Ram Krishan Sharma, r/o V.P.O. Bhanjwani, Tehsil Ghumarwin, District Bilaspur, H.P. (vii) Shri Rabin Kumar s/o Shri Ranbir Singh Thakur, r/o Village Bajroh, P.O. Badhani, Tehsil Bhoranj, District Hamirpur, H.P. and Sh. Ram Sumer s/o Shri Jagat Pal, r/o Village Akoopur, P.O. Haswa, Tehsil & District Fatehpur, U.P. regarding their transfer orders issued by the Employer/Factory Manager, M/s Inox Wind Limited, Plot No. I, Industrial Area, V.P.O. Basal, Tehsil & District Una, H.P. during the spread of COVID-19 Pandemic from out of Himachal Pradesh to Gujarat and other parts of India and not paid their due wages/salary for three months from August, September and October, 2020 and not paying their legitimate full and final dues as settlement held with other workmen is legal and justified? If not, what kind of service benefits, financial relief and other benefits including compensation are entitled to from the employer under the Industrial Disputes Act, 1947”.

2. The brief facts as stated in the claim petition filed by the petitioners is that the petitioners were appointed in the company as workmen on various designations and are working in the company for last 5 to 10 years since 2010-2011. The petitioners/workmen performed their duties well and given task in a perfect manner and were loyal to the company and dedicated works. It is however alleged that the respondent in order to harass the petitioners made unnecessary delay in giving salary and other benefits. It is further alleged that the petitioners made compromise to avoid dispute however they are working in accordance with unlawful terms and conditions. In the year 2020 in the month of June to November, respondent deliberately transferred terminated, retrenched some employees/workmen including the petitioners. The transfer order was given to the petitioners for Bhuj, Dayapar, Nipeniya, Rojmal etc. at Gujrat on 14-10-2020. On 15-10-2020 the petitioners raised demand notice before appropriate Government where the respondent did not agree to resolve the matter. It is alleged that the respondent had unlawfully, arbitrarily transferred the petitioners from one place to other that too a remote location in India. The petitioners were transferred during Covid Pandemic and they were not able to move with or without family. It was highly impossible for the petitioners to survive in CTS/package and salary afforded by the respondent. The salary of the petitioners were credited on time. During conciliation proceedings directions were given by authorities on 9-11-2020 to pay the balance salary of three months however their remaining bonus is still pending for which separate demand notice had been raised. The petitioners demanded retrenchment compensation as provided in the case of factory closure and respondent had already given to other 32 workers earlier during month of August, 2020. The respondent settled the dispute with other workmen on 14-9-2020 by providing retrenchment benefit to them. However a different treatment was given to the petitioners by denying to resolve the matter and depriving of benefits and pending dues. It is asserted that neither the respondent has given any gainful employment or benefits to the petitioners but has been harassing the petitioners who are sole bread earner of their family children and parents. It is alleged that transfer orders was deliberately issued in order to create undue influence on the petitioners so that they tender their resignation. Thus it is alleged that the petitioners were being victimized by the respondent employer. The petitioners had prayed that the petition may be allowed and the respondent be directed to cancel the transfer orders dated 14-10-2020 and to declare transfer orders null and void.

The petitioners also prayed that they be restored to their job along with other benefits or the dispute may be settled like other workers by providing retrenchment benefits.

3. In reply to the claim preliminary objections qua maintainability, suppression of material facts, non-joinder and mis-joinder of parties, lack of cause of action etc. were raised. The present petition is alleged to be barred under Section 10 of CPC in view of Civil Suit No. 24/2021 is pending before learned Civil Judge Court No.2, Una, H.P. On merits, it is asserted that due to business requirements and in order to save the employment of the petitioners they were transferred to different sites vide transfer letter dated 14-10-2020. Due to market conditions and unavoidable circumstances the respondent factory was not able to continue to retain the petitioners at Una Plant. All the transfers were made by due process and not accompanied by any ill-will. It is further mentioned that as per Clause 10 of the appointment letters duly signed by the petitioners the services of the petitioners were liable to be transferred at any time. It is also asserted that the respondent always appeared before the authorities and submitted their version in accordance with law. It is denied that the transfers were unlawful and/or arbitrary but same were carried out to save the employment of the petitioners. According to the respondent there is no other plant of respondent in Himachal Pradesh except Una plant which is not in function now. The fact qua non operation of the Una Plant was well within the knowledge of the petitioners and they have also not joined their duties on respective transferred sites despite repeated request which resulted in financial losses to the respondent. It is submitted that the petitioners were granted increase of salary, shifting of household goods as well as family expenses which was to be borne by the respondent. According to the respondent the transfers in every department or establishment is a routine process which is part of service of employment. The petitioners were duly served transfer letters but they did not join their respective sites of work. The act and conduct of the petitioners is alleged to be uncalled for and against business and professional practices. It is also mentioned that the petitioners have referred a Civil Suit No. 24/2021 before learned Civil Judge Court No. 2, Una, H.P. titled as Vishal vs. Kallol Chakraborty and others whereby they have already challenged the transfer order dated 14-10-2020 by way of Suit for Mandatory Injunction made in the petition. Denying other allegations it is prayed that the petition be dismissed.

4. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 03-6-2022:—

1. Whether the demands raised by the petitioners regarding their transfer and dues from the respondent are legal and justified, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
4. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? . . . *OPR.*
5. Whether the petitioners have not enforceable cause of action, as alleged? . . . *OPR.*
6. Whether the petitioners have not come to this Court with clean hands and have suppressed the material facts, as alleged. If so, its effect? . . . *OPR.*
7. Whether the claim petition is barred by limitation? . . . *OPR.*

Relief.

5. The petitioners in order to prove their case have examined PW1 Robin Saini by way of affidavit Ext. PW1/A, PW2 Vishal by way of affidavit Ext. PW1/A, PW3 Sonu Kumar by way of

affidavit Ext. PW3/A, PW4 Nikhil Kapila by way of affidavit Ext. PW4/A and PW5 Abhishek Kalia by way of affidavit Ext. PW5/A. They have reasserted the facts stated in the petition and prayed for relief as mentioned in the claim petition.

6. The respondent has examined Surinder Pal as RW1 being Authorized Representative of the respondent company. He has produced his affidavit RW-1 and certified copy of plaint Ext. R-1 and e-mail with documents Mark-R in evidence.

7. I have heard the learned Counsel for both the parties at length and records perused.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Issue No. 6 : Yes

Issue No. 7 : No

Relief. : Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

9. Affidavit on the similar line have been produced on record by the petitioners No.1 to 5. It is consistently stated in the affidavit that the petitioners performed their duties in perfect manner and dedicated towards the respondent. It is alleged that the respondent has vide order dated 14.10.2020 deliberately transferred the petitioners at far of places in Gujarat and various other sites across India. Learned Counsel for the petitioners has vehemently argued that the purposes of the transfer of the petitioners to far and distant places was malafide so as to force the petitioners to submit their resignation and deprive the petitioner of the their benefits under the Act. Learned Counsel further submitted that on previous occasion also the respondent has entered into settlement with other workmen and they were granted benefit of retrenchment. On the contrary learned counsel for the respondent has submitted that there has not been any complete closure of the factory in the present case. The operation of the factory has been stopped due to Covid-19. There is no other plant of the respondent in the State of Himachal Pradesh. Due to non operation of the Una Plant which fact is also within the knowledge of the petitioners they had been transferred to their respective sites. In fact since the petitioners have not joined their duties on the respective places of posting it itself resulted in financial loss for the respondent. Section 2 (ra) of the Industrial Disputes Act, 1947 is reads as follow:—

2[(ra) "unfair labour practice" means any of the practices specified in the Fifth Schedule;”

10. A bare reading of part 7 of Schedule V is as follows: “To transfer workmen malafide from one place to another, under the guise of following management policy”. The indulgence of this court has been sought on behalf of the petitioners primarily on the allegations that their transfer to far place was malafide merely to avoid grant of retrenchment benefits in their favour. Thus, in order to prove the unfair labour practices on the part of the respondent the petitioners have to establish the facts constituting malafide conduct on behalf of the respondent. The Hon’ble Supreme Court in **Rajneesh Khajuria vs Wockhardt Ltd., 2020 AIR SC 506 or 2020 Part-II SCALE 40** is held in paras No. 14,15,16 or 17:—

14. The act of transfer can be unfair labour practice if the transfer is actuated by malafide. The allegations of malafide have two facets – one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment reported as State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.⁶, this Court held that malafide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of malafide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour 6 1992 Supp (1) SCC 222 practice unless it is actuated by mala fide. Therefore, to sustain a plea of mala fide, there has to be an element of personal bias or an oblique motive. This Court held as under:

“50. Malafides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of malafide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made malafide for such considerations.

Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken malafide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

xx xx xx

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable

exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Ch. Bhajan Lal [1992 Supp (1) SCC 335 :

JT 1990 (4) SC 650] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the malafides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly I hold that the findings of the High Court that FIR gets vitiated by the malafides of the Administrator and the charge-sheets are the results of the malafides of the informant or investigator, to say the least, is fantastic and obvious gross error of law.”

15. In another judgment reported as Prabodh Sagar v. Punjab State Electricity Board & Ors.⁷, it was held by this Court that the mere use of the expression “malafide” would not by itself make the petition entertainable. The Court held as under:

“13. ... Incidentally, be it noted that the expression “malafide” is not meaningless jargon and it has its proper connotation. Malice or malafides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation *vis-à-vis* an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (sic compulsory) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for 7 (2000) 5 SCC 630 voluntary retirement. There must be factual support pertaining to the allegations of malafides, unfortunately there is none. Mere user of the word “malafide” by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion *i.e.* exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. ...”

16. In a judgment reported as HMT Ltd. & Anr. v. Mudappa & Ors.⁸, quoting from earlier judgment of this Court reported as State of A.P. & Ors. v. Goverdhanlal Pitti⁹, it was held that ‘legal malice’ or ‘malice in law’ means ‘something done without lawful excuse’. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. The Court held as under:

“24. The Court also explained the concept of legal malafide. By referring to Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989 the Court stated:

(Goverdhanlal case [(2003) 4 SCC 739], SCC p. 744, para 12) “12. The legal meaning of malice is ‘ill will or spite towards a party and any indirect or improper motive in taking an action’. This is sometimes described as ‘malice in fact’. ‘Legal malice’ or ‘malice in law’ means ‘something done without lawful excuse’. In other words, ‘it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of

the rights of others.’ ” It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or 8 (2007) 9 SCC 768 9 (2003) 4 SCC 739 personal ill-will or spite on the part of the State. It could only be malice in law i.e. legal malafide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide.”

17. In a judgment reported as Union of India & Ors. v. Ashok Kumar & Ors.¹⁰, it has been held that allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Court held as under:

“21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that malafides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [(1964) 4 SCR 733 : AIR 1964 SC 72].) It cannot be overlooked that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made 10 (2005) 8 SCC 760 than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

As noted by this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528].)”

11. The above ratio laid down by the Hon'ble Supreme Court clearly provides that the action of respondent in transferring the petitioners is to be proved to be based on malafide motive and the onus was on the petitioners to establish this fact before the court.

12. The transfer orders Ext. PW2/D, PW3/D, PW4/D and PW5/D have been produced on the case file which mentioned the purpose of transfer *i.e.* with a view to make organization structure more flexible and responsive to business requirements as well as to best leverage human resources and skills. Specific allegations have been made in the affidavit produced on behalf of the petitioners that the respondent was not paying their due benefits on time. It was also alleged that on being transferred the petitioners were not able to move in view of the CTS package and salary which was offered to the petitioners. It was specifically alleged that the pay for the last three months of service was received by the petitioners and the bonus was not paid by the respondent. It was further alleged that though retrenchment benefits were granted to certain workmen, the

petitioners were intentionally deprived of the same by way of settlement. In this context it is important to peruse the cross-examination of the petitioners. The petitioners have admitted that they have not joined the place of their transfer. The petitioners have admitted that they agreed to condition No.10 of the appointment letter vide which they could be transferred at any place in the Country or abroad. They also admitted that other workers were also transferred at the same time. They admitted that Manish Kumar and Vinod Sharma etc. were also transferred from Himachal Pradesh. They admitted that Surinder Pal, Authorized Representative of respondent was also transferred and he joined the place of his transfer. They specifically admitted that there was no other plant of the respondent in the State of H.P. At the one instance they stated that their salary was less and salary for six months was unpaid. Subsequently, it is admitted that they have received the salary till last day of their working. They further admitted that bonus has also been granted in their account. It is important to observe that according to the petitioners also only 4-5 persons are now working in Una. They have admitted that their transfer was as per terms and conditions of the appointment letter.

13. As asserted by the learned counsel for the respondent it has been almost conceded by the petitioners in their cross-examination that their transfer was carried out in terms of clause 10 of their appointment letter. They admitted the signatures on appointment letter. They admitted that the factory was not working with its full capacity only 4-5 workers at present. This fact corroborates the submissions made by the respondent that the factory was not in a working condition which forced them as a matter of fact to transfer the petitioners to other plants different sites in India. The issue regarding the payment of salary for the last month of their working and the bonus also appears to have admitted in the cross-examination which shows that there is no amount due from the respondent towards the petitioners. The conduct of the petitioners is further admitted by them. They have admitted that they had not joined the new place of posting. The transfer orders Ext. PW1/D clearly shows that increased basic pay alongwith allowances was made payable to the petitioners by way of transfer orders and specific emoluments were also paid for shifting their household goods and their family expenses borne by the respondent to the place of transfer. As mentioned above, the onus was on the petitioners to prove malafide on behalf respondent company. Evidence was to be led to prove that in guise of transfer company intended to dispense with the services of petitioners. No specific evidence has been produced by the petitioners to show that during the period contemporary to their transfer retrenchment benefits were awarded to other employees. RW1 Surinder Pal has admitted in his cross-examination that they had effected compromise with the workers before Labour Officer and as per compromise they were retrenched. However no suggestion has been made to this witness that this retrenchment compromised was carried out with other workers at the same time when transfer orders of petitioners were made. Shri Surinder Pal, RW1 has stated that retrenchment compromise was carried out as no work was available at the relevant time. There is no oral or documentary evidence which would equate the present petitioners with that the persons who are alleged to have been retrenched by way of compromise. The petitioners have failed to establish malafide on behalf of the respondent and demands raised by the petitioners regarding their transfer by the respondent cannot be held to be legal and justified. Accordingly issue No.1 is decided in favour of the respondent.

Issue No.2

14. It has already had been held that the demands which have been raised by way of claim petition were not legal and justified consequently the petitioners are not entitled for the relief as prayed in the petition and the this issue is decided accordingly.

Issues No.3, 4, 5 and 6

15. The onus of proving these issues on the respondent. The respondent has proved from the statement of RW1 Surinder Pal and also from the appointment letter and transfer orders that the

transfer of the petitioners were in accordance with the conditions of their appointment letter and due to the non working of the factory at Una. There was no other plant of respondent at Himachal Pradesh consequently the petitioners were transferred to different places in Gujrat and other places in India. The factum of malafide alleged by the petitioners could not be established by way of evidence and hence the claim petition is not maintainable the petitioners do not have any cause of action to file the present petition. The case of the respondent was admitted in the cross-examination of the petitioners and it also appears that they have received the pay for last month including bonus. They have not joined place of posting of transfer. These facts were specifically concealed by the petitioners which also disentitled them from the relief as prayed in the present claim petition. Issues No. 3 to 6 are decided in favour of the respondent.

Issue No.7

16. The perusal of the reference and the claim petition shows that the claim has been preferred before this court well within the period of limitation hence the same cannot be declared to be barred by limitation. This issue accordingly decided in favour of the petitioner.

Relief

17. In view of my findings on the issues no. 1 to 7 above, the claim petition is dismissed with regard to the demands raised by the petitioners regarding their transfer dues from the respondent. The said demands cannot be held to be legal and justified. The parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 192/2017

Date of Institution : 14.9.2017

Date of Decision : 29.6.2024

Shri Surinder Kumar s/o Shri Om Prakash, r/o Village Bangarh, P.O. Jakhera, Tehsil &
District Una, H.P. . . . *Petitioner.*

Versus

The Manager, M/s Ranger Breweries Limited, Industrial Area Mehatpur, Tehsil & District
Una, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ishant Guleria, Ld. Adv.

For Respondent : Sh. Anubhav Walia, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Surinder Kumar s/o Shri Om Prakash, r/o Village Bangarh, P.O. Jakhera, Tehsil & District Una, H.P. by the Manager, M/s Rangar Breweries Limited, Industrial Area Mehatpur, Tehsil & District Una, H.P. during 21-03-2016 on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition on behalf of the petitioner is that the services of the petitioner were engaged by the respondent management as a worker w.e.f. May, 2008 by verbal order and he continued to work in the factory upto 18.3.2016. It is asserted that during this period the work and conduct of the petitioner was fully satisfactory upto the mark and he did not give any chance to his superiors as well as respondent for any misconduct. It is further alleged that the services of the petitioner were suspended by the management w.e.f. 19.3.2016 despite being innocent and less literate person. The termination was done on the verbal directions of the management and he was directed not to join his service as an employee. The said termination is alleged to be unlawful as the petitioner was not given complete allowance by the management. It is alleged that the respondent has violated the principle of natural justice. Even though the petitioner had completed 240 days in each calendar year for last 12 calendar months this illegal termination and unlawful suspension was carried out by the respondent. The petitioner raised demand notice in the month of March, 2016 which was replied by the management. In the month of April, 2016 the petitioner came to know about his termination and received charge-sheet from the management. The disciplinary proceedings were alleged to be against the principle of natural justice. It is further alleged that the respondent has not followed the principle of 'last come first go' and has appointed fresh workers. During conciliation proceedings the respondent has refused to reinstate the services of the petitioner. The act and conduct of respondent to terminate the services of the petitioner during 21.3.2016 on the basis of the domestic enquiry are alleged to be carried out without compliance with the provisions of the Act. The domestic inquiry is also alleged to be unjustified, arbitrary and unconstitutional. It is submitted that petitioner is still unemployed and not gainfully employed since the date of his illegal suspension and termination. As per averments the petitioner prayed that to set aside illegal termination of petitioner w.e.f. 21.3.2016. He also prayed that respondent be directed to reinstate his services along with seniority and continuity in service. He has also claimed that he may be given back wages from 21.3.2016 onwards along-with interest.

3. The respondents have by way of written statement/reply have made preliminary objections qua maintainability, reference being pre-matured etc. On merits, it is admitted that the petitioner was working with the management in May, 2008. It is also denied that work and conduct of the petitioner was satisfactory. Infact according to the respondents the petitioner was engaged by the management on 17.4.2012 as casual worker. It is denied that the services of the petitioner were

illegally suspended by the management on 19.3.2016. It is further asserted that his services have been terminated and he had been paid allowances by the management. The allegations made in the petition are alleged to be false and concocted. It is mentioned that the petitioner was issued suspension letter, charge-sheeted by the management after holding domestic enquiry and after affording fair and proper opportunity, his services were dispensed with by the management vide order dated 21.9.2016. The petitioner had participated during the proceeding and received suspension allowances till 21.9.2016. In the light of these averments the petitioner is estopped by his act and conduct to raise that his services were terminated on 19.3.2016. The respondents have denied that the management has violated the principle of natural justice leading to suspension of termination of the petitioner. Other allegations have been denied and prayed that the petitioner is not entitled for the relief as claimed in the petition.

4. In rejoinder to the reply/written statement preliminary objections have been denied and facts existed in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 07.12.2018:

1. Whether termination of the service of petitioner by the respondent *w.e.f.* 21-03-2016 is/was legal and justified as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? .. *OPP.*
3. Whether the claim petition is not maintainable in the present form? .. *OPR.*

Relief.

6. The petitioner in order to prove his case has filed affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He has also produced copy of application Ext. PW1/B and copy of termination letter dated 21.9.2016 Ext. PW1/C.

7. The respondents have examined Shri Sushil Kumar, Commercial Assistant (Unit Head) of M/s Ranger Breweries Ltd., Industrial Area, Mehatpur, Tehsil and District Una, H.P. by way of affidavit Ext. RW1/A. He has reiterated on oath the case of the respondents.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : Yes

Relief : Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS*Issue No.1*

10. It has been asserted by the petitioner in his affidavit Ext. PW1/A that he was appointed w.e.f. May, 2008 by way of verbal order. He continued to work with the factory upto 18.3.2016 and during the time his work and conduct was fully satisfactory upto the mark. On the contrary to respondent witness RW1 Shri Sushil Kumar who is the Commercial Assistant (Unit Head) of Rangar Breweries Ltd. has stated in his affidavit that the petitioner/claimant had not joined the service in the month of May, 2008. Infact his services were engaged on 17.4.2012 as casual worker. The petitioner was suspended and charges were framed against him by the management. Domestic enquiry was conducted and petitioner was given due and proper opportunity to contest and defend his case. After holding domestic inquiry in accordance with law his services were dispensed with finally by the management on 21.9.2016. The petitioner had participated domestic inquiry proceedings and he also received suspension allowances till 21.9.2016. The primary allegation made in the claim petition as well the affidavit produced on behalf of petitioner/claimant is that his services were dispensed with without following the due procedure. No show cause notice, charge-sheet or explanation was ever issued to him. He had completed 240 days in each and every calendar year as well as 12 months preceding the date of his suspension and termination. The disciplinary proceedings are alleged to be against natural justice. It is pertinent to observe that the petitioner has not asserted nor clarified the facts amounting to violation of principle of natural justice during the course of enquiry proceedings being conducted by the respondents. It is important to peruse the cross-examination of petitioner. The petitioner has denied the suggestion that on 18.3.2016 there was the quarrel with one Kulwinder Kaur who was also working in the company and during quarrel four bottles of "Lalkila" were damaged. He also denied that during course of quarrel Smt. Sumna Devi received injury on her stomach and head. He denied that an application was presented by Smt. Sumna Devi to the respondents which is Ext. R-1. He however feigned ignorance with respect to the dispensary slip of Smt. Sumna Devi vide which she received treatment Ext. R-2. He has denied that on 18.3.2016 he had given an apology to the company Ext. R-4. He however admitted that he has not given any complaint to any authority that the company was imitating the signatures on the documents. He has feigned ignorance to the suggestion that on 19.3.2016 he was charge-sheeted. However denied that he was asked to appear daily and put his signatures on gate register vide Ext. R-5. He denied that any notice was issued to him which he had refused to accept. He has denied that on 7.4.2016 he was charge sheeted vide Ext. R-9. He has also shown his ignorance as to when he was finally terminated by the company. Subsequently however during course of his cross-examination he has admitted that company had carried out a domestic enquiry under the chairmanship of Shri Aneesh J.P. Advocate. He admitted that enquiry was commenced from 10.5.2016 and he was called by the enquiry committee on 30.5.2016 vide Ext. R-9. He admitted that he attended each and every hearing and his attendance was also marked during enquiry proceedings. He denied that during enquiry proceeding company had produced its witness and he also led witness in the proceedings. He further admitted that he written letter to the company that all the correspondence with him and letters issued to him should be communicated in Hindi. He has denied even giving his statement during course of enquiry. However he admitted that the domestic inquiry concluded against him vide Ext. R-10. He further admitted that after the report of domestic enquiry he was terminated and expressed his ignorance to the suggestion that on 8.8.2016 show cause notice had been issued to him. He further admitted that he gave response to the company vide Ext. R-12 as to why he should not be terminated from the company. He further admitted that on 21.9.2016 he was finally terminated by termination order Ext. R-13. He admitted that in September, 2016 he had received the payment for 18 days work. He admitted that payment for April, 2016, May, 2016, June, 2016, July, 2016 and August, 2016 had also been received by him vide Ext. R-15 to Ext. R-19.

11. It is pertinent to mention that though allegations of violation of principle of natural justice have been made in the pleadings as well as in the affidavit of the petitioner however the specific facts on the basis of which the principle of natural justice are alleged to have been violated during course of enquiry proceedings have not been mentioned by the petitioner. During course of his statement he initially denied receiving show cause notice and charge-sheet and however subsequently he has admitted that he was present on each and every day of proceedings of domestic enquiry. He has not made any specific allegation of partiality or violation of principle of natural justice by Sh. Aneesh J.P. Advocate in his pleadings or statement made this court. It is also not the case of the petitioner that he was unheard or due process was not followed by the domestic enquiry committee. The orders passed by domestic enquiry committee were duly communicated to him and he was paid suspension allowances till the date of his termination. In the petition it is submitted that due allowances have not been given to the petitioner however during course of cross-examination he has completely conceded that he had been paid the amount due to him by the company till his termination. Section 2 (oo) of the Act defines retrenchment as follows:—

“2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include - *[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).*

(a)voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]

(bb)[termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] *[Inserted by Act 49 of 1984, Section 2 (w.e.f. 18.8.1984).]*(c) [termination of the service of a workman on the ground of continued ill-health;] *[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).]*

12. It is appear circumstances under which the petitioner has been terminated from the respondent company does not fall within the definition of retrenchment under the Act. In the light of these facts the management was not liable to comply with the conditions of Sections 25-F, 25-G and 25-H of the Act. The case of the petitioner does not fall within the purview of retrenchment as defined under the Act. The services of the petitioner were terminated after due enquiry and petitioner has participated and was given due opportunity to lead evidence during course of enquiry proceedings. All the dues of the petitioner including the suspension allowances were paid to him. Thus the termination of services of the petitioner on 19.3.2016 after holding fair enquiry was legal and justified. Issue No.1 is accordingly decided in favour of the respondents.

Issue No.2

13. In view of the detailed discussion of facts and circumstances while discussing issue No.1 above the petitioner is not entitled for the service benefits as prayed in the claim petition and the issue No.2 is decided accordingly.

Issue No.3

14. The maintainability of the petition has specifically challenged on the court that termination of the petitioner was carried out after detailed enquiry and the procedure and after payment of suspension allowances in favour of the petitioner till his termination. The petitioner has not been able to prove any facts which constituted any violation of principle of natural justice in the domestic enquiry leading to his termination hence claim petition is not maintainable. Issue No.3 is also decided in favour of the respondents.

Relief

15. In view of my findings on the issues no. 1 to 3 above, the claim petition is dismissed with regard to termination of the services of the petitioner on 21.3.2016 by the respondents cannot be held illegal and unjustified. The parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 162/2017

Date of Institution : 03.8.2017

Date of Decision : 29.6.2024

Smt. Kulwinder Kaur w/o Shri Ravinder Kumar, r/o Village and Post Office Behdala,
Tehsil and District Una, H.P. . . . *Petitioner.*

Versus

The Managing Director, Ragar Breweries Limited, 1 & 130, Industrial Area, Mehatpur,
District Una, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ishant Guleria, Ld. Adv.

For Respondent : Sh. Anubhav Walis, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Smt. Kulwinder Kaur w/o Shri Ravinder Kumar, r/o Village and Post Office Behdala, Tehsil and District Una, H.P. by the Managing Director, Ragar Breweries Limited, 1 & 130, Industrial Area, Mehatpur, District Una, H.P. *w.e.f.*

21.3.2016 on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management”.

2. The brief facts as stated in the claim petition on behalf of the petitioner is that the services of the petitioner were engaged by the respondent management as a worker w.e.f. May, 2008 by verbal order and she continued to work in the factory upto 18.3.2016. It is asserted that during these period the work and conduct of the petitioner was fully satisfactory upto the mark and she did not give any chance to her superiors as well as respondent for her misconduct. It is further alleged that the services of the petitioner were suspended by the management w.e.f. 19.3.2016 despite being innocent and less literate person. The termination was done on the verbal directions of the management and she was directed not to join her service as an employee. The said termination is alleged to unlawful as the petitioner was not given complete allowance by the management. It is alleged that the respondent has violated the principle of natural justice. Even though the petitioner had completed 240 days in each ever calendar year for last 12 calendar months despite this illegal termination and unlawful suspension was carried out by the respondent. The petitioner raised demand notice in the month of March, 2016 which was replied by the management. In the month of April, 2016 the petitioner came to know about her termination and received charge-sheet from the management. The disciplinary proceedings were alleged to be against the principle of natural justice. It is further alleged that the respondent has not followed the principle of ‘last come first go’ and has appointed fresh workers. During conciliation proceeding the respondent has refused to reinstate the services of the petitioner. The act and conduct of respondent to terminate the services of the petitioner during 21.3.2016 on the basis of the domestic enquiry were alleged by carried out without compliance with the provisions of the Act. The domestic inquiry is alleged to be unjustified, arbitrary and unconstitutional. It is submitted that petitioner is still unemployed and not gainfully employed since the date of her illegal suspension and termination. The respondent never gave and deducted EPF and other monetary benefits as per law. The petitioner has prayed to set aside illegal termination of petitioner w.e.f. 31.3.2016. She also prayed that respondent be directed to reinstate the services of the petitioner along with seniority and continuity in service. She has also claimed that she may be given back wages from 21.3.2016 onwards along-with interest.

3. The respondents have by way of written statement/reply raised preliminary objections qua maintainability, reference being pre-mature etc. On merits, it is admitted that the petitioner was working with the management in May, 2008. It is denied that work and conduct of the petitioner was satisfactory. Infact according to the respondents the petitioner was engaged by the management on 16.4.2012 as casual worker. It is denied that the services of the petitioner were illegally suspended by the management on 19.3.2016. It is further asserted that her services have been terminated and she had been paid allowances by the management. The allegations made in the petition are alleged to be false and concocted. It is mentioned that the petitioner was issued suspension and charge-sheeted by the management after holding domestic enquiry and after affording fair and proper opportunity, her services were dispensed with by the management vide order dated 21.9.2016. The petitioner had participated during the proceeding and received suspension allowances till 21.9.2016. In the light of these averments the petitioner is estopped by her act and conduct to raise a dispute that her services were terminated illegally on 19.3.2016. The respondents have denied that the management has violated the principle of natural justice leading to suspension and termination of the petitioner. Other allegations have been denied and prayed that the petitioner is not entitled for the relief as claimed in the petition.

4. In rejoinder to the reply/written statement preliminary objections have been denied and facts existed in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 07.12.2018:

1. Whether termination of the service of petitioner by the respondent *w.e.f.* 21-03-2016 is/was legal and justified as alleged? . . *OPP (corrected on 12.6.2024)*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*.
3. Whether the claim petition is not maintainable in the present form? . . *OPR*.

Relief

6. The petitioner in order to prove her case has filed affidavit Ext. PW1/A wherein she has reiterated the facts stated in the petition. She has also produced copy of application Ext. PW1/B and copy of termination letter dated 21.9.2016 Ext. PW1/C.

7. The respondents have examined Shri Sushil Kumar, Commercial Assistant (Unit Head) of M/s Ranger Breweries Ltd., Industrial Area, Mehatpur, Tehsil and District Una, H.P. by way of affidavit Ext. RW1/A. He has reiterated on oath the case of the respondents.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : Yes

Relief : Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. It has been asserted by the petitioner that she was appointed by the respondent management as worker *w.e.f.* May, 2008 and continued to work in the factory upto 18.3.2016. She has alleged that thereafter her employment was discontinued by way of show cause notice/charge-sheet despite the fact that she had worked with the factory to the satisfaction of her superiors and the management. Contrary to this it is the case of the respondent as stated on oath by RW1 Shri Sushil Kumar that when the petitioner was suspended thereafter charges were framed by the management of the company. She was given due and proper opportunity to defend her case after holding domestic enquiry. In accordance with law her services were dispensed with by the management of the company. He asserted that the petitioner had participated in the domestic enquiry proceedings and received suspension allowances till 21.9.2016. Throughout the petition as well as statement of petitioner as Ext. PW1/A the proceedings undertaken by the respondent are

alleged to be without following the principle of natural justice. It is pertinent to observe that the petitioner has not asserted nor clarified the facts amounting to violation of principle of natural justice in the enquiry which has been conducted by the respondent. The cross-examination of the petitioner in this regard is important. She has admitted in her cross-examination that on 16.4.2012 she was employed as casual worker by the respondents. She has denied that there was any quarrel with Sumna Devi on 18.3.2016 and during this quarrel four bottles of 'Lalkila' were broken. She denied that Sumna Devi had received injuries on her stomach and head during the course of above quarrel. She feigned ignorance to the suggestion that application was filed by Sumna Devi which is Ex. R-1. She also feigned ignorance that Sumna Devi had got treatment in ESI Dispensary vide Ext. R-2. She denied that guard Sobha Rani had given an application Ext. R-3. Though she has admitted her signatures inside red circle on Ext. R-4. The perusal of the documents R-4 shows that the same appear to be an apology tendered by the petitioner with regard to breaking of bottles in the factory. She has denied that she was charge-sheeted on 19.3.2016 however it is pertinent to mention that the document dated 21.9.2016 has been produced on behalf of the petitioner which clearly shows that she was terminated from service on 21.9.2016. During the course of cross-examination she has admitted that she gave an application before Labour Inspector. On 12.4.2016 Labour Inspector had issued notice to the company and at that time she was working with the company. This admission clearly defeats contention of the petitioner that she was discontinued from her services by the respondent on 18.3.2016. She further admitted that domestic inquiry was got conducted by the company in which Aneesh J.P. Advocate was appointed. She admitted that on 30.5.2016 she was called vide Ext. R-9. She further admitted that she remained present on every date of enquiry in which witness of the company were examined and she also produced her witnesses during the course of enquiry. She admitted that her statement was recorded during the course of enquiry and though she had denied that on the basis of report of domestic inquiry she was terminated, she has admitted that Ext. R-10 is a domestic enquiry report. She has feigned ignorance to the suggestion that after the conclusion of the enquiry show cause notice Ext. R-11 was issued to her. She has admitted receiving the termination order Ext. R-12. She also clearly admitted that she had received all the monetary benefits pertaining to August, 2016, September, 2016 and April, 2016 which are Ext. R-13, Ext. R-14 and Ext. R-15.

11. It appears that whole of the case set up by the respondents leading to the termination of the services of the petitioner has been admitted by the petitioner in her cross-examination. No specific allegations of the facts which constituted the violation of principle of natural justice during enquiry proceedings have been pleaded or proved by way of evidence of the petitioner. Learned counsel for the petitioner has vehemently argued that all the officials of company were members of inquiry committee hence inquiry was not done by independent persons. The petitioner in her cross-examination has admitted that enquiry was conducted by Anees J.P. Advocate. RW1 Sushil Kumar has clarified in his cross-examination that Shri Anees J.P. Advocate is not an official of the company. Otherwise also no specific allegations of partiality or violation of any principle of natural justice by Shri Aneesh J.P. Advocate have been made in the pleadings or in the statement made by the petitioner. Section 2(oo) defines retrenchment as follows:—

"2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include - *[Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).]*
(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]

(bb)[termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] *[Inserted by Act 49 of 1984, Section 2 (w.e.f. 18.8.1984).]*(c) [termination of the service of

a workman on the ground of continued ill-health;] [Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).]

12. It is clear that the circumstances under which the services of the petitioner have been terminated does not fall within the definition of retrenchment under the Act. In the light of these facts the management was not liable to comply with the condition of Sections 25-F, 25-G and 25-H of the Act. The case of the petitioner does not fall within the purview of retrenchment as defined under the Act. The services of the petitioner have been terminated after due enquiry held by the respondents company and the petitioner has participated and was given full opportunity to lead evidence during the course of enquiry proceedings. As it has been admitted by the petitioner that she was paid all the allowances till the date of her termination the termination of services of the petitioner actually carried out on 21.9.2016 and the same was legal and justified. Issue No.1 is accordingly decided in favour of the respondents.

Issue No.2

13. In view of the detailed discussion of facts and circumstances while discussing issue No.1 above the petitioner is not entitled for the service benefits as prayed in the claim petition and the issue No.2 is decided accordingly.

Issue No.3

14. The maintainability of the petition is specifically challenged on the court that termination of the petitioner was carried out after detailed enquiry and due procedure and after payment of suspension allowances in favour of the petitioner till her termination. The petitioner has not been able to prove any facts which constituted any violation of principle of natural justice in the domestic enquiry alleging to her termination hence claim petition is not maintainable. Issue No. 3 is also decided in favour of the respondents.

Relief

15. In view of my findings on the issues no. 1 to 3 above, the claim petition is dismissed with regard to termination of the services of the petitioner on 21.3.2016. The termination on 21.9.2016 is held to be legal and justified. The parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 58/2020
Date of Institution : 08.9.2020
Date of Decision : 29.6.2024

Shri Rachh Pal s/o Shri Joli Ram, r/o Village Devgaon, P.O. Baggi, Tehsil Khundiyan, District Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil and District Hamirpur, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.
For Respondent : Sh. Vijay Mehra, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court the terms of reference are as under:-

“Whether the verbal termination of services of Shri Rachh Pal s/o Shri Joli Ram, r/o Village Devgaon, P.O. Baggi, Tehsil Khundiyan, District Kangra, H.P. by the Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil & District Hamirpur, H.P. during March, 2018 without complying with the existing provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner Rachh Pal s/o Sh. Joli were appointed by the respondent w.e.f. 15th March, 2010 on piece rate basis without any appointment letter and he continued to work till March, 2018. It is submitted that during this period department made payment to petitioner on piece rate basis fixed by the department. The work was allotted to petitioner by the Forest Corporation every year of extraction of resin on piece rate with certain terms and conditions. It is submitted that the work and conduct of petitioner was satisfactory with entire certification of the department and the respondent from March, 2010 to 2018. He was never given any show cause notice, charge-sheet was not served on him neither any enquiry was conducted as per Industrial Employment Standing Order, 1946 relating to any misconduct during completed period of his services. The petitioner had completed more than 240 days in each calendar year as well as 12 preceding months from the date of his termination in the month of March, 2018. He has not provided duty by the Divisional Manager, Forest Corporation, Hamirpur in month of March, 2018 and who verbally stated to petitioner that department has received information from higher authority that no workmen have been engaged through department for extraction of resin and department has decided to engage workmen through labour contractor. The petitioner denied to work under control and supervision of contractor and due to this reason his services were unlawfully terminated by the respondent in the month of March, 2018. It is asserted that department was making payment to the petitioner every year in his bank account and he was also member of Provident Fund Scheme, 1952. The respondent deducted the provident fund of the petitioner and deposited before Provident Fund Commissioner and thus they cannot claim that he was not employee of the department. It is alleged that after terminating the services of the petitioner in March, 2018 he raised an industrial dispute vide demand notice dated 5.3.2019 and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dehra. Before termination of the services

of the petitioner he was not given one month's notice or one month pay in lieu of notice period under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) nor he was paid any retrenchment compensation nor any information was sent to appropriate Government, Labour Commissioner as is mandatory under Section 25 (c) of the Act. The petitioner has alleged the violation of Section 25-F and Section 9-A alongwith principle of natural justice by the respondent. It is further alleged that at the time of his termination in the month of March, 2018 the contractor was engaged by the respondent by violating the principle of 'last come first go'. The contract agreement and list of contractor workers as well as licence which has been obtained by the learned authority Labour Officer Bilaspur is also available with the respondent department alongwith the list of regular workers of the department from the year 2010 onwards. The petitioner has alleged that the act of respondent amounted to unfair labour practices as services of the petitioner were terminated without following the mandatory provisions of the Act. After his termination he was not gainfully employed anywhere thus the petitioner is also entitled to reinstatement, continuity of service alongwith full back wages from the date of alleged unlawful termination *i.e.* March, 2018 till date.

3. In reply on behalf of the respondent preliminary objections qua maintainability have been raised. It is asserted that the respondent corporation is owned and controlled by State Government, H.P. and incorporated under the Companies Act, 1956. State of Himachal Pradesh has complete control over the respondent corporation since its inception. The work of timber and resin extraction is executed by the respondent corporation through tender and work is allotted to lowest rate tendered after completion of codal formalities. The work of resin extraction starts in the month of March and culminated in the month of November. It is further asserted that the petitioner had moved an application, affidavit and conditional request vide which he agreed to work for resin extraction on sanctioned schedule rate of H.P. Forest Corporation. Every year he would submit application for extraction of resin work to be awarded to him. It is asserted that the petitioner was never appointed by the Forest Corporation as member or employee of the company. Therefore the condition of 240 days is not liveable in this case. The petitioner was accordingly engaged for seasonal resin extraction work on the basis of his request. It is also asserted that the respondent Forest is Corporation earning its own revenue and as has been registered as a company the government Agency and working on the basis of its own profit and loss. Therefore uneconomical work is not allotted by the management of company. It is further denied that the services of the petitioner were terminated unlawfully. According to the respondent every amount due to the petitioner have been released to him and since he was not appointment by the respondent corporation he cannot be considered as employee of the corporation. Other allegations made in the petition were denied. The respondent also asserted that they had invited tenders and obtained minus 30% from schedule rate which was already given to the petitioner. Keeping in view the above the corporation had sustained loss of 30% and 12% employer share. It is asserted that financial loss was being borne by the corporation due to the supplying of the material to the petitioner. Thus action of the corporation is asserted to be lawful. It is prayed that the petition may be dismissed.

4. By way of rejoinder the preliminary objections raised by the respondent has been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:-

1. Whether the verbal termination of services of the petitioner during March, 2018 by the respondent is violation of the provisions contained under the Act, as alleged? .. OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? .. OPP.

3. Whether the claim petition is not maintainable, as alleged?

.. OPR.

Relief.

6. The petitioner Rachh Pal in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced seniority list of workers as it stood on 1.10.2020 Ext. PW1/B and attendance sheets supplied by the D.M. Ext. PW1/C.

7. Respondent has examined Shri Jagdish Gautam, Divisional Manager, Forest Working Division Hamirpur, District Hamirpur, H.P. In his affidavit RW-1 reiterated the facts stated in the reply. He also stated on oath that the seniority list of daily wager Class-IV workers is not maintained in their office. It is further stated that notification of piece rate workers notified by the State Government for engagement of piece rate workers is also not available in their office.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Rachh Pal has stated in his affidavit that he was appointed by the respondent *w.e.f.* 15.3.2010 on piece rate basis without any appointment letter and settled terms however he continued to work till March, 2018. He has also stated that he was allotted the work of extraction of resin every year on piece rate basis and payment was made to him as per piece rate fixed by the Government. He has reiterated in his affidavit that his services were terminated unlawfully by the respondent despite the fact that he had completed more than 240 days in each calendar year and in the last 12 calendar months preceding from the date of his illegal termination. He has also stated that he was asked to perform his duties under the control and supervision of contractor and on his refusal his services were terminated by the respondent. With regard to this contention raised by the petitioner, the respondent has asserted that petitioner was never appointed as an employee by the forest corporation. The petitioner had moved an application, affidavit and conditional request vide which he agreed to work of resin extraction on sanctioned schedule rates by the H.P. Forest Corporation. Learned counsel for the respondent has submitted that the petitioner not being employee of the respondent the condition of working of 240 days is not liveable in the present case. Infact the work of extraction of resin is seasonal activity which is being conducted from the month of March to the month of November every year. In view of these facts petitioner cannot be considered as an employee and there was no employer and workman relationship between the respondent and the petitioner. The learned Authorized Representative/Counsel has relied upon the ratio laid down Hon'ble Supreme Court in **Bhilwara Dugdh Utpadak Sahkari S. Ltd. vs. Vinod Kumar Sharma through his LRs & Ors. 2011 LLR SC 1079** whereby the Hon'ble Supreme Court has held in para Nos. 4 and 5 which reads as under:-

- “4. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term of casual employees when in fact they are doing the work of regular employees.
5. This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers”.

In order to prove that there was contract with the respondent for yearly basis, the respondent has produced on record affidavit Mark-R-1 and agreement letter Ext. R-1. It is asserted on behalf of the respondent that there was no “contract of service” between the respondent and the petitioner however there was “contract for service” on yearly basis. The Honble Supreme Court in catena of judgment has laid down, that to determine whether a working relationship is in the nature of a ‘contract of service’ or a ‘contract for service’ in each case has to be answered having regard to the surrounding facts involved in that particular working relationship. Common characteristics which have been observed to be included in contract of service/employer-employee relationship. (i) *The worker performs services in the employer’s premises.* (ii) *The workers works on machines supplied by the employer* (iii) *The manner in which a worker is paid is irrelevant. A worker can be an employee even though he is paid piece-meal and not per day/month.* (iv) *The worker would be an employee if he has agreed to work personally, it is irrelevant if he takes assistance from other persons who work under him.* (v) *The employer has power of control in respect of the work that is to be done, as well as the manner/method in which the work is required to be done by the worker.* (vi) *The employer has the power to reject the end product of the worker if it does not conform to the instruction of the employer and the worker can be directed to re-work on the assignment which means control and supervision of the employer on the employee. The employer has the power to direct obligation to provide payment/remuneration to the worker. The degree of control and supervision by the employer on the worker would be different in different types of businesses.* (***Workmen of Nilgiri Co-operative Marketing Society Limited vs. State of Tamil Nadu and Ors., AIR 2004 SC 1639***), ***Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments, 1974 AIR 37, Shining Tailors vs. Industrial Tribunal II, U.P. Lucknow and Ors. AIR 1984 SC 23***). Learned counsel for the respondent has relied upon the findings of Hon’ble Supreme Court in ***Anil Bapurao Kanase vs. Krishna Sahkari Sakhar Karkhana Ltd. and Anr. AIR 1997 SC 2698*** wherein the Hon’ble Supreme Court has held in para No.3:—

“in *Morinda Co-op Sugar Mills Ltd. v. Ram Kishan*, (1995) 5 SCC 653: (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not ‘retrenchment’ within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application”.

The above ratio is not applicable to the fact of the case as the findings in above were in respect of closure of factory after crushing season and not retrenchment of workman.

11. Though it is submitted by the learned counsel for the respondent that the work of the petitioner was seasonal. It is however, it is pertinent to mention that RW1 Shri Jagdish Gautam,

Divisional Manager, Forest Corporation has stated in his deposition that any document *i.e.* notification on piece rate workers notified by State Government was not available with their office. It is also important to peruse the cross-examination of RW1 Shri Jagdish Gautam. In his cross-examination, he has stated that the work of corporation collection of resin is seasonal work and the Assistant Manager, Jawalaji was directed to work the lot departmentally on sanctioned schedule of rate. As mentioned above, no notification in this regard was produced on record. He has admitted that they have not produced copy of schedule rate. He has also admitted that they have not produced the application to the department allegedly moved by the petitioner every year. He admitted that EPF of all the employees of the department was deducted and the EPF contribution of petitioner was also deducted from March, 2010 to March, 2018. He has denied that the petitioner has worked as daily wager however he admitted that department had made payment for work done by the petitioner. He has also stated that the work of petitioner was controlled and supervised by the Assistant Manager, Jawalaji though the work was on contract nature. He admitted that petitioner has never made any application during his service tenure. Applying the above tests laid down by the Hon'ble Supreme Court with regard to contract of employment it can be observed that the work of the petitioner were being carried out under direct supervision of the respondent. Material which was being used to work was also being supplied by the respondent. The payment though done on piece meal basis was also continued from March, 2010 to March, 2018. In the light of the above evidence it is clear that there was contract of service between the petitioner and the respondent and the petitioner was not merely working in contract for service. The nature of work being conducted by the petitioner was not independent and was under the direct control and supervision of the respondent hence petitioner was a workman under the Act.

12. In order to prove the continuous service the petitioner had duly produced the record of payment being made to him from the month of April, 2010 to the month of November, 2017. Even though the payment was being made and the work was being conducted for eight months in a year. It is clear that the petitioner had completed 240 days of work in each year of his employment and 240 days of work in 12 months period preceding his termination. Thus it can be held that he was in continuous service within the meaning of Clause 1 of Section 25-B of the Act.

13. The respondent has merely denied relationship of employer and employee between the petitioner and the respondent, no document pertaining to the termination or any benefits being provided in accordance with the provisions of Section 25-F have been produced before the court. In the light of these observations and the evidence which have been produced on record by the parties, it can be safely held that the termination of the services of the petitioner during March, 2018 by the respondent is in the violation of provisions of the Act.

Issue No.2

14. Petitioner Rachh Pal has stated on oath that since the termination of his services from the establishment of the respondent he had not been gainfully employed. There is no evidence to controvert the contention made by the petitioner in his petition. The respondent has submitted the copy of seniority list Ext. PW1/B as it stood on 1.10.2020 where the names of the newly appointed person were reflected at serial no. 25 to 98. The above mentioned persons were appointed after the termination of the services of the petitioner in clear violation of Section 25-G of the Act. Thus it is proved that the termination of the petitioner was in violation of Sections 25-F, 25-G and 25-H of the Act. In the light of the above discussed evidence which is not controverted and disputed by the respondent the illegal termination of petitioner is set aside. He is entitled for reinstatement of his services, seniority, service benefits. Issues No.1 and 2 are decided in favour of the petitioner.

Issue No.3

15. In view of findings on issues no.1 and 2 above, the claim petition is very much maintainable as the petitioner was not a mere contractor but his services were engaged as workman, hence this issue is decided in negative.

Relief

16. In view of my discussion on the above issues, the claim petition is succeed and allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination to the date of his reinstatement. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 61/2020

Date of Institution : 08.9.2020

Date of Decision : 29.6.2024

Shri Prakash Chand s/o Shri Garibu Ram, r/o Village Hardeep Pur, P.O. Lagru, Tehsil
Khundiyan, District Kangra, H.P. . . . *Petitioner.*

Versus

The Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil and District
Hamirpur, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Vijay Mehra, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court the terms of reference are as under:—

“Whether the verbal termination of services of Shri Prakash Chand s/o Shri Garibu Ram, r/o Village Hardeep Pur, P.O. Lagru, Tehsil Khundiyan, District Kangra, H.P. by the Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil & District Hamirpur, H.P. during March, 2018 without complying with the existing provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner Prakash Chand s/o Sh. Garibu Ram were appointed by the respondent *w.e.f.* 15th March, 2014 on piece rate basis without any appointment letter and he continued to work till March, 2018. It is submitted that during this period department made payment to petitioner on piece rate basis fixed by the department. The work was allotted to petitioner by the Forest Corporation every year of extraction of resin on piece rate with certain terms and conditions. It is submitted that the work and conduct of petitioner was satisfactory with entire certification of the department and the respondent from March, 2014 to 2018. He was never given any show cause notice, charge-sheet was not served on him neither any enquiry was conducted as per Industrial Employment Standing Order, 1946 relating to any misconduct during completed period of his services. The petitioner had completed more than 240 days in each calendar year as well as 12 preceding months from the date of his termination in the month of March, 2018. He has not provided duty by the Divisional Manager, Forest Corporation, Hamirpur in month of March, 2018 and who verbally stated to petitioner that department has received information from higher authority that no workmen have been engaged through department for extraction of resin and department has decided to engage workmen through labour contractor. The petitioner denied to work under control and supervision of contractor and due to this reason his services were unlawfully terminated by the respondent in the month of March, 2018. It is asserted that department was making payment to the petitioner every year in his bank account and he was also member of Provident Fund Scheme, 1952. The respondent deducted the provident fund of the petitioner and deposited before Provident Fund Commissioner and thus they cannot claim that he was not employee of the department. It is alleged that after terminating the services of the petitioner in March, 2018 he raised an industrial dispute vide demand notice dated 5.3.2019 and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dehra. Before termination of the services of the petitioner he was not given one month's notice or one month pay in lieu of notice period under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) nor he was paid any retrenchment compensation nor any information was sent to appropriate Government, Labour Commissioner as is mandatory under Section 25 (c) of the Act. The petitioner has alleged the violation of Section 25-F and Section 9-A alongwith principle of natural justice by the respondent. It is further alleged that at the time of his termination in the month of March, 2018 the contractor was engaged by the respondent by violating the principle of 'last come first go'. The contract agreement and list of contractor workers as well as licence which has been obtained by the learned authority Labour Officer Bilaspur is also available with the respondent department along-with the list of regular workers of the department from the year 2014 onwards. The petitioner has alleged that the act of respondent amounted to unfair labour practices as services of the petitioner were terminated without following the mandatory provisions of the Act. After his termination he was not gainfully employed anywhere thus the petitioner is also entitled to reinstatement, continuity of service alongwith full back wages from the date of alleged unlawful termination *i.e.* March, 2018 till date.

3. In reply on behalf of the respondent preliminary objections qua maintainability have been raised. It is asserted that the respondent corporation is owned and controlled by State Government, H.P. and incorporated under the Companies Act, 1956. State of Himachal Pradesh has complete control over the respondent corporation since its inception. The work of timber and resin extraction is executed by the respondent corporation through tender and work is allotted to lowest rate tendered after completion of codal formalities. The work of resin extraction starts in the month of March and culminated in the month of November. It is further asserted that the petitioner had moved an application, affidavit and conditional request vide which he agreed to work for resin extraction on sanctioned schedule rate of H.P. Forest Corporation. Every year he would submit application for extraction of resin work to be awarded to him. It is asserted that the petitioner was never appointed by the Forest Corporation as member or employee of the company. Therefore the condition of 240 days is not liveable in this case. The petitioner was accordingly engaged for seasonal resin extraction work on the basis of his request. It is also asserted that the respondent Forest is Corporation earning its own revenue and as has been registered as a company the government Agency and working on the basis of its own profit and loss. Therefore uneconomical work is not allotted by the management of company. It is further denied that the services of the petitioner were terminated unlawfully. According to the respondent every amount due to the petitioner have been released to him and since he was not appointment by the respondent corporation he cannot be considered as employee of the corporation. Other allegations made in the petition were denied. The respondent also asserted that they had invited tenders and obtained minus 30% from schedule rate which was already given to the petitioner. Keeping in view the above the corporation had sustained loss of 30% and 12% employer share. It is asserted that financial loss was being borne by the corporation due to the supplying of the material to the petitioner. Thus action of the corporation is asserted to be lawful. It is prayed that the petition may be dismissed.

4. By way of rejoinder the preliminary objections raised by the respondent has been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:-

1. Whether the verbal termination of services of the petitioner during March, 2018 by the respondent is violation of the provisions contained under the Act, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*

Relief.

6. The petitioner Prakash Chand in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced seniority list of workers as it stood on 1.10.2020 Ext. PW1/B and attendance sheets supplied by the D.M. Ext. PW1/C.

7. Respondent has examined Shri Jagdish Gautam, Divisional Manager, Forest Working Division Hamirpur, District Hamirpur, H.P. In his affidavit RW-1 reiterated the facts stated in the reply. He also stated on oath that the seniority list of daily wager Class-IV workers is not maintained in their office. It is further stated that notification of piece rate workers notified by the State Government for engagement of piece rate workers is also not available in their office.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Prakash Chand has stated in his affidavit that he was appointed by the respondent *w.e.f.* 15.3.2014 on piece rate basis without any appointment letter and settled terms however he continued to work till March, 2018. He has also stated that he was allotted the work of extraction of resin every year on piece rate basis and payment was made to him as per piece rate fixed by the Government. He has reiterated in his affidavit that his services were terminated unlawfully by the respondent despite the fact that he had completed more than 240 days in each calendar year and in the last 12 calendar months preceding from the date of his illegal termination. He has also stated that he was asked to perform his duties under the control and supervision of contractor and on his refusal his services were terminated by the respondent. With regard to this contention raised by the petitioner, the respondent has asserted that petitioner was never appointed as an employee by the forest corporation. The petitioner had moved an application, affidavit and conditional request vide which he agreed to work of resin extraction on sanctioned schedule rates by the H.P. Forest Corporation. Learned counsel for the respondent has submitted that the petitioner not being employee of the respondent the condition of working of 240 days is not liveable in the present case. Infact the work of extraction of resin is seasonal activity which is being conducted from the month of March to the month of November every year. In view of these facts petitioner cannot be considered as an employee and there was no employer and workman relationship between the respondent and the petitioner. The learned Authorized Representative/Counsel has relied upon the ratio laid down Hon'ble Supreme Court in **Bhilwara Dugdh Utpadak Sahkari S. Ltd. vs. Vinod Kumar Sharma through his LRs & Ors. 2011 LLR SC 1079** whereby the Hon'ble Supreme Court has held in para Nos. 4 and 5 which reads as under:—

“4. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term of casual employees when in fact they are doing the work of regular employees.

5. This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers”.

In order to prove that there was contract with the respondent for yearly basis, the respondent has produced on record agreement letter Ext. R-1. It is asserted on behalf of the respondent that there was no “contract of service” between the respondent and the petitioner however there was “contract for service” on yearly basis. The Honble Supreme Court in catena of judgment has laid down, that to determine whether a working relationship is in the nature of a ‘contract of service’ or a ‘contract for service’ in each case has to be answered having regard to the surrounding facts involved in that particular working relationship. Common characteristics which have been observed to be included in contract of service/employer-employee relationship. (i) *The worker performs services in the employer’s premises.* (ii) *The workers works on machines supplied by the employer* (iii) *The manner in which a worker is paid is irrelevant. A worker can be an employee even though he is paid piece-meal and not per day/month.* (iv) *The worker would be an employee if he has agreed to work personally, it is irrelevant if he takes assistance from other persons who work under him.* (v) *The employer has power of control in respect of the work that is to be done, as well as the manner/method in which the work is required to be done by the worker.* (vi) *The employer has the power to reject the end product of the worker if it does not conform to the instruction of the employer and the worker can be directed to re-work on the assignment which means control and supervision of the employer on the employee. The employer has the power to direct obligation to provide payment/remuneration to the worker. The degree of control and supervision by the employer on the worker would be different in different types of businesses.* (***Workmen of Nilgiri Co-operative Marketing Society Limited vs. State of Tamil Nadu and Ors., AIR 2004 SC 1639***), ***Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments, 1974 AIR 37***, ***Shining Tailors vs. Industrial Tribunal II, U.P. Lucknow and Ors. AIR 1984 SC 23***). Learned counsel for the respondent has relied upon the findings of Hon’ble Supreme Court in ***Anil Bapurao Kanase vs. Krishna Sahkari Sakhar Karkhana Ltd. and Anr. AIR 1997 SC 2698*** wherein the Hon’ble Supreme Court has held in para No.3:—

“in *Morinda Co-op Sugar Mills Ltd. v. Ram Kishan*, (1995) 5 SCC 653: (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not ‘retrenchment’ within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application”.

The above ratio is not applicable to the fact of the case as the findings in above were in respect of closure of factory after crushing season and not retrenchment of workman.

11. Though it is submitted by the learned counsel for the respondent that the work of the petitioner was seasonal. It is however, it is pertinent to mention that RW1 Shri Jagdish Gautam, Divisional Manager, Forest Corporation has stated in his deposition that any document *i.e.* notification on piece rate workers notified by State Government was not available with their office. It is also important to peruse the cross-examination of RW1 Shri Jagdish Gautam. In his cross-examination, he has stated that the work of corporation collection of resin is seasonal work and the Assistant Manager, Jawalaji was directed to work the lot departmentally on sanctioned schedule of rate. As mentioned above, no notification in this regard was produced on record. He has admitted that they have not produced copy of schedule rate. He has also admitted that they have not produced the application to the department allegedly moved by the petitioner every year. He admitted that EPF of all the employees of the department was deducted and the EPF contribution of petitioner was also deducted from March, 2014 to March, 2018. He has denied that the petitioner has worked as daily wager however he admitted that department had made payment for work done by the petitioner. He has also stated that the work of petitioner was controlled and supervised by the

Assistant Manager, Jawalaji though the work was on contract nature. He admitted that petitioner has never made any application during his service tenure. Applying the above tests laid down by the Hon'ble Supreme Court with regard to contract of employment it can be observed that the work of the petitioner were being carried out under direct supervision of the respondent. Material which was being used to work was also being supplied by the respondent. The payment though done on piece meal basis was also continued from March, 2014 to March, 2018. In the light of the above evidence it is clear that there was contract of service between the petitioner and the respondent and the petitioner was not merely working in contract for service. The nature of work being conducted by the petitioner was not independent and was under the direct control and supervision of the respondent hence petitioner was a workman under the Act.

12. In order to prove the continuous service the petitioner had duly produced the record of payment being made to him from the month of April, 2014 to the month of November, 2017. Even though the payment was being made and the work was being conducted for eight months in a year. It is clear that the petitioner had completed 240 days of work in each year of his employment and 240 days of work in 12 months period preceding his termination. Thus it can be held that he was in continuous service within the meaning of Clause 1 of Section 25-B of the Act.

13. The respondent has merely denied relationship of employer and employee between the petitioner and the respondent, no document pertaining to the termination or any benefits being provided in accordance with the provisions of Section 25-F have been produced before the court. In the light of these observations and the evidence which have been produced on record by the parties, it can be safely held that the termination of the services of the petitioner during March, 2018 by the respondent is in the violation of provisions of the Act.

Issue No. 2

14. Petitioner Prakash Chand has stated on oath that since the termination of his services from the establishment of the respondent he had not been gainfully employed. There is no evidence to controvert the contention made by the petitioner in his petition. The respondent has submitted the copy of seniority list Ext. PW1/B as it stood on 1.10.2020 where the names of the newly appointed person were reflected at serial no.57 to 98. The above mentioned persons were appointed after the termination of the services of the petitioner in clear violation of Section 25-G of the Act. Thus it is proved that the termination of the petitioner was in violation of Sections 25-F, 25-G and 25-H of the Act. In the light of the above discussed evidence which is not controverted and disputed by the respondent the illegal termination of petitioner is set aside. He is entitled for reinstatement of his services, seniority, service benefits. Issues No.1 and 2 are decided in favour of the petitioner.

Issue No. 3

15. In view of findings on issues no.1 and 2 above, the claim petition is very much maintainable as the petitioner was not a mere contractor but his services were engaged as workman, hence this issue is decided in negative.

Relief

16. In view of my discussion on the above issues, the claim petition is succeed and allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination to the date of his reinstatement. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Reference No. : 60/2020
Date of Institution : 08.9.2020
Date of Decision : 29.6.2024

Shri Ghungru Ram s/o Shri Bharu Ram, r/o Village Mahad, P.O. Lagru, Tehsil Khundiyan,
District Kangra, H.P. . . . *Petitioner.*

Versus

The Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil and District
Hamirpur, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.
For Respondent : Sh. Vijay Mehra, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court the terms of reference are as under:—

“Whether the verbal termination of services of Shri Ghungru Ram s/o Shri Bharu Ram, r/o Village Mahad, P.O. Lagru, Tehsil Khundiyan, District Kangra, H.P. by the Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil & District Hamirpur, H.P. during March, 2018 without complying with the existing provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner Ghungru Ram s/o Sh. Bharu Ram were appointed by the respondent *w.e.f.* 15th March, 2017 on piece rate basis without any appointment letter and he continued to work till March, 2018. It is submitted that during this period department made payment to petitioner on piece rate basis fixed by the department. The work was allotted to petitioner by the Forest Corporation every year of extraction of resin on piece rate with certain terms and conditions. It is submitted that the work and conduct of petitioner was satisfactory with entire certification of the department and the respondent from March, 2017 to 2018. He was never given any show cause notice, charge-sheet was not served on him neither any enquiry was conducted as per Industrial Employment Standing Order, 1946 relating to any misconduct during completed period of his services. The petitioner had completed more than 240 days in each calendar year as well as 12 preceding months from the date of his termination in the month of March, 2018. He has not provided duty by the Divisional Manager, Forest Corporation, Hamirpur in month of March, 2018 and who verbally stated to petitioner that department has received information from higher authority that no workmen have been engaged through department for extraction of resin and department has decided to engage workmen through labour contractor. The petitioner denied to work under control and supervision of contractor and due to this reason his services were unlawfully terminated by the respondent in the month of March, 2018. It is asserted that department was making payment to the petitioner every year in his bank account and he was also member of Provident Fund Scheme, 1952. The respondent deducted the provident fund of the petitioner and deposited before Provident Fund Commissioner and thus they cannot claim that he was not employee of the department. It is alleged that after terminating the services of the petitioner in March, 2018 he raised an industrial dispute vide demand notice dated 5.3.2019 and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dehra. Before termination of the services of the petitioner he was not given one month's notice or one month pay in lieu of notice period under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) nor he was paid any retrenchment compensation nor any information was sent to appropriate Government, Labour Commissioner as is mandatory under Section 25 (c) of the Act. The petitioner has alleged the violation of Section 25-F and Section 9-A alongwith principle of natural justice by the respondent. It is further alleged that at the time of his termination in the month of March, 2018 the contractor was engaged by the respondent by violating the principle of 'last come first go'. The contract agreement and list of contractor workers as well as licence which has been obtained by the learned authority Labour Officer Bilaspur is also available with the respondent department along-with the list of regular workers of the department from the year 2017 onwards. The petitioner has alleged that the act of respondent amounted to unfair labour practices as services of the petitioner were terminated without following the mandatory provisions of the Act. After his termination he was not gainfully employed anywhere thus the petitioner is also entitled to reinstatement, continuity of service alongwith full back wages from the date of alleged unlawful termination i.e. March, 2018 till date.

3. In reply on behalf of the respondent preliminary objections qua maintainability have been raised. It is asserted that the respondent corporation is owned and controlled by State Government, H.P. and incorporated under the Companies Act, 1956. State of Himachal Pradesh has complete control over the respondent corporation since its inception. The work of timber and resin extraction is executed by the respondent corporation through tender and work is allotted to lowest rate tendered after completion of codal formalities. The work of resin extraction starts in the month of March and culminated in the month of November. It is further asserted that the petitioner had moved an application, affidavit and conditional request *vide* which he agreed to work for resin extraction on sanctioned schedule rate of H.P. Forest Corporation. Every year he would submit application for extraction of resin work to be awarded to him. It is asserted that the petitioner was never appointed by the Forest Corporation as member or employee of the company. Therefore the condition of 240 days is not liveable in this case. The petitioner was accordingly engaged for seasonal resin extraction work on the basis of his request. It is also asserted that the respondent

Forest is Corporation earning its own revenue and as has been registered as a company the government Agency and working on the basis of its own profit and loss. Therefore uneconomical work is not allotted by the management of company. It is further denied that the services of the petitioner were terminated unlawfully. According to the respondent every amount due to the petitioner have been released to him and since he was not appointment by the respondent corporation he cannot be considered as employee of the corporation. Other allegations made in the petition were denied. The respondent also asserted that they had invited tenders and obtained minus 30% from schedule rate which was already given to the petitioner. Keeping in view the above the corporation had sustained loss of 30% and 12% employer share. It is asserted that financial loss was being borne by the corporation due to the supplying of the material to the petitioner. Thus action of the corporation is asserted to be lawful. It is prayed that the petition may be dismissed.

4. By way of rejoinder the preliminary objections raised by the respondent has been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the verbal termination of services of the petitioner during March, 2018 by the respondent is violation of the provisions contained under the Act, as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR*.

Relief.

6. The petitioner Ghungru Ram in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced seniority list of workers as it stood on 1.10.2020 Ext. PW1/B and attendance sheets supplied by the D.M. Ext. PW1/C.

7. Respondent has examined Shri Jagdish Gautam, Divisional Manager, Forest Working Division Hamirpur, District Hamirpur, H.P. In his affidavit RW-1 reiterated the facts stated in the reply. He also stated on oath that the seniority list of daily wager Class-IV workers is not maintained in their office. It is further stated that notification of piece rate workers notified by the State Government for engagement of piece rate workers is also not available in their office.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS*Issue No.1*

10. Petitioner Ghungru Ram has stated in his affidavit that he was appointed by the respondent *w.e.f.* 15.3.2017 on piece rate basis without any appointment letter and settled terms however he continued to work till March, 2018. He has also stated that he was allotted the work of extraction of resin every year on piece rate basis and payment was made to him as per piece rate fixed by the Government. He has reiterated in his affidavit that his services were terminated unlawfully by the respondent despite the fact that he had completed more than 240 days in each calendar year and in the last 12 calendar months preceding from the date of his illegal termination. He has also stated that he was asked to perform his duties under the control and supervision of contractor and on his refusal his services were terminated by the respondent. With regard to this contention raised by the petitioner, the respondent has asserted that petitioner was never appointed as an employee by the forest corporation. The petitioner had moved an application, affidavit and conditional request vide which he agreed to work of resin extraction on sanctioned schedule rates by the H.P. Forest Corporation. Learned counsel for the respondent has submitted that the petitioner not being employee of the respondent the condition of working of 240 days is not liveable in the present case. Infact the work of extraction of resin is seasonal activity which is being conducted from the month of March to the month of November every year. In view of these facts petitioner cannot be considered as an employee and there was no employer and workman relationship between the respondent and the petitioner. The learned Authorized Representative/Counsel has relied upon the ratio laid down Hon'ble Supreme Court in **Bhilwara Dugdh Utpadak Sahkari S. Ltd. vs. Vinod Kumar Sharma through his LRs & Ors. 2011 LLR SC 1079** whereby the Hon'ble Supreme Court has held in para Nos. 4 and 5 which reads as under:—

- “4. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term of casual employees when in fact they are doing the work of regular employees.
5. This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers”.

In order to prove that there was contract with the respondent for yearly basis, the respondent has produced on record agreement letter Ext. R-1. It is asserted on behalf of the respondent that there was no “contract of service” between the respondent and the petitioner however there was “contract for service” on yearly basis. The Honble Supreme Court in catena of judgment has laid down, that to determine whether a working relationship is in the nature of a ‘contract of service’ or a ‘contract for service’ in each case has to be answered having regard to the surrounding facts involved in that particular working relationship. Common characteristics which have been observed to be included in contract of service/employer-employee relationship. (i) *The worker performs services in the employer’s premises.* (ii) *The workers works on machines supplied by the employer* (iii) *The manner in which a worker is paid is irrelevant. A worker can be an employee even though he is paid piece-meal and not per day/month.* (iv) *The worker would be an employee if he has agreed to work personally, it is irrelevant if he takes assistance from other persons who work under him.* (v) *The employer has power of control in respect of the work that is to be done, as well as the*

*manner/method in which the work is required to be done by the worker. (vi) The employer has the power to reject the end product of the worker if it does not conform to the instruction of the employer and the worker can be directed to re-work on the assignment which means control and supervision of the employer on the employee. The employer has the power to direct obligation to provide payment/remuneration to the worker. The degree of control and supervision by the employer on the worker would be different in different types of businesses. (Workmen of Nilgiri Co-operative Marketing Society Limited vs. State of Tamil Nadu and Ors., AIR 2004 SC 1639), Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments, 1974 AIR 37, Shining Tailors vs. Industrial Tribunal II, U.P. Lucknow and Ors. AIR 1984 SC 23). Learned counsel for the respondent has relied upon the findings of Hon'ble Supreme Court in **Anil Bapurao Kanase vs. Krishna Sahkari Sakhar Karkhana Ltd. and Anr.** AIR 1997 SC 2698 wherein the Hon'ble Supreme Court has held in para No.3:—*

“in *Morinda Co-op Sugar Mills Ltd. v. Ram Kishan*, (1995) 5 SCC 653: (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not ‘retrenchment’ within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application”.

The above ratio is not applicable to the fact of the case as the findings in above were in respect of closure of factory after crushing season and not retrenchment of workman.

11. Though it is submitted by the learned counsel for the respondent that the work of the petitioner was seasonal. It is however, it is pertinent to mention that RW1 Shri Jagdish Gautam, Divisional Manager, Forest Corporation has stated in his deposition that any document *i.e.* notification on piece rate workers notified by State Government was not available with their office. It is also important to peruse the cross-examination of RW1 Shri Jagdish Gautam. In his cross-examination, he has stated that the work of corporation collection of resin is seasonal work and the Assistant Manager, Jawalaji was directed to work the lot departmentally on sanctioned schedule of rate. As mentioned above, no notification in this regard was produced on record. He has admitted that they have not produced copy of schedule rate. He has also admitted that they have not produced the application to the department allegedly moved by the petitioner every year. He admitted that EPF of all the employees of the department was deducted and the EPF contribution of petitioner was also deducted from March, 2017 to March, 2018. He has denied that the petitioner has worked as daily wager however he admitted that department had made payment for work done by the petitioner. He has also stated that the work of petitioner was controlled and supervised by the Assistant Manager, Jawalaji though the work was on contract nature. He admitted that petitioner has never made any application during his service tenure. Applying the above tests laid down by the Hon'ble Supreme Court with regard to contract of employment it can be observed that the work of the petitioner were being carried out under direct supervision of the respondent. Material which was being used to work was also being supplied by the respondent. The payment though done on piece meal basis was also continued from March, 2017 to March, 2018. In the light of the above evidence it is clear that there was contract of service between the petitioner and the respondent and the petitioner was not merely working in contract for service. The nature of work being conducted by the petitioner was not independent and was under the direct control and supervision of the respondent hence petitioner was a workman under the Act.

12. In order to prove the continuous service the petitioner had duly produced the record of payment being made to him from the month of April, 2017 to the month of November, 2017. Even

though the payment was being made and the work was being conducted for eight months in a year. It is clear that the petitioner had completed 240 days of work in each year of his employment and 240 days of work in 12 months period preceding his termination. Thus it can be held that he was in continuous service within the meaning of Clause 1 of Section 25-B of the Act.

13. The respondent has merely denied relationship of employer and employee between the petitioner and the respondent, no document pertaining to the termination or any benefits being provided in accordance with the provisions of Section 25-F have been produced before the court. In the light of these observations and the evidence which have been produced on record by the parties, it can be safely held that the termination of the services of the petitioner during March, 2018 by the respondent is in the violation of provisions of the Act.

Issue No.2

14. Petitioner Ghungru Ram has stated on oath that since the termination of his services from the establishment of the respondent he had not been gainfully employed. There is no evidence to controvert the contention made by the petitioner in his petition. The respondent has submitted the copy of seniority list Ext. PW1/B as it stood on 1.10.2020 where the names of the newly appointed person were reflected at serial no.57 to 98. The above mentioned persons were appointed after the termination of the services of the petitioner in clear violation of Section 25-G of the Act. Thus it is proved that the termination of the petitioner was in violation of Sections 25-F, 25-G and 25-H of the Act. In the light of the above discussed evidence which is not controverted and disputed by the respondent the illegal termination of petitioner is set aside. He is entitled for reinstatement of his services, seniority, service benefits. Issues No.1 and 2 are decided in favour of the petitioner.

Issue No.3

15. In view of findings on issues no.1 and 2 above, the claim petition is very much maintainable as the petitioner was not a mere contractor but his services were engaged as workman, hence this issue is decided in negative.

Relief

16. In view of my discussion on the above issues, the claim petition is succeed and allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination to the date of his reinstatement. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 56/2020

Date of Institution : 08.9.2020

Date of Decision : 29.6.2024

Shri Suresh Kumar s/o Shri Chamaru Ram, r/o Village Tali, P.O. Lagru, Tehsil Khundiyan, District Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil and District Hamirpur, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Vijay Mehra, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court the terms of reference are as under:—

“Whether the verbal termination of services of Shri Suresh Kumar s/o Shri Chamaru Ram, r/o Village Tali, P.O. Lagru, Tehsil Khundiyan, District Kangra, H.P. by the Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil & District Hamirpur, H.P. during March, 2018 without complying with the existing provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner Suresh Kumar s/o Shri Chamaru Ram were appointed by the respondent *w.e.f.* 15th March, 2014 on piece rate basis without any appointment letter and he continued to work till March, 2018. It is submitted that during this period department made payment to petitioner on piece rate basis fixed by the department. The work was allotted to petitioner by the Forest Corporation every year of extraction of resin on piece rate with certain terms and conditions. It is submitted that the work and conduct of petitioner was satisfactory with entire certification of the department and the respondent from March, 2014 to 2018. He was never given any show cause notice, charge-sheet was not served on him neither any enquiry was conducted as per Industrial Employment Standing Order, 1946 relating to any misconduct during completed period of his services. The petitioner had completed more than 240 days in each calendar year as well as 12 preceding months from the date of his termination in the month of March, 2018. He has not provided duty by the Divisional Manager, Forest Corporation, Hamirpur in month of March, 2018 and who verbally stated to petitioner that department has received information from higher authority that no workmen have been engaged

through department for extraction of resin and department has decided to engage workmen through labour contractor. The petitioner denied to work under control and supervision of contractor and due to this reason his services were unlawfully terminated by the respondent in the month of March, 2018. It is asserted that department was making payment to the petitioner every year in his bank account and he was also member of Provident Fund Scheme, 1952. The respondent deducted the provident fund of the petitioner and deposited before Provident Fund Commissioner and thus they cannot claim that he was not employee of the department. It is alleged that after terminating the services of the petitioner in March, 2018 he raised an industrial dispute *vide* demand notice dated 5.3.2019 and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dehra. Before termination of the services of the petitioner he was not given one month's notice or one month pay in lieu of notice period under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) nor he was paid any retrenchment compensation nor any information was sent to appropriate Government, Labour Commissioner as is mandatory under Section 25 (c) of the Act. The petitioner has alleged the violation of Section 25-F and Section 9-A alongwith principle of natural justice by the respondent. It is further alleged that at the time of his termination in the month of March, 2018 the contractor was engaged by the respondent by violating the principle of 'last come first go'. The contract agreement and list of contractor workers as well as licence which has been obtained by the learned authority Labour Officer Bilaspur is also available with the respondent department along-with the list of regular workers of the department from the year 2013 onwards. The petitioner has alleged that the act of respondent amounted to unfair labour practices as services of the petitioner were terminated without following the mandatory provisions of the Act. After his termination he was not gainfully employed anywhere thus the petitioner is also entitled to reinstatement, continuity of service alongwith full back wages from the date of alleged unlawful termination *i.e.* March, 2018 till date.

3. In reply on behalf of the respondent preliminary objections qua maintainability have been raised. It is asserted that the respondent corporation is owned and controlled by State Government, H.P. and incorporated under the Companies Act, 1956. State of Himachal Pradesh has complete control over the respondent corporation since its inception. The work of timber and resin extraction is executed by the respondent corporation through tender and work is allotted to lowest rate tendered after completion of codal formalities. The work of resin extraction starts in the month of March and culminated in the month of November. It is further asserted that the petitioner had moved an application, affidavit and conditional request *vide* which he agreed to work for resin extraction on sanctioned schedule rate of H.P. Forest Corporation. Every year he would submit application for extraction of resin work to be awarded to him. It is asserted that the petitioner was never appointed by the Forest Corporation as member or employee of the company. Therefore the condition of 240 days is not liveable in this case. The petitioner was accordingly engaged for seasonal resin extraction work on the basis of his request. It is also asserted that the respondent Forest is Corporation earning its own revenue and as has been registered as a company the government Agency and working on the basis of its own profit and loss. Therefore uneconomical work is not allotted by the management of company. It is further denied that the services of the petitioner were terminated unlawfully. According to the respondent every amount due to the petitioner have been released to him and since he was not appointment by the respondent corporation he cannot be considered as employee of the corporation. Other allegations made in the petition were denied. The respondent also asserted that they had invited tenders and obtained minus 30% from schedule rate which was already given to the petitioner. Keeping in view the above the corporation had sustained loss of 30% and 12% employer share. It is asserted that financial loss was being borne by the corporation due to the supplying of the material to the petitioner. Thus action of the corporation is asserted to be lawful. It is prayed that the petition may be dismissed.

4. By way of rejoinder the preliminary objections raised by the respondent has been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the verbal termination of services of the petitioner during March, 2018 by the respondent is violation of the provisions contained under the Act, as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR*.

Relief.

6. The petitioner Hem Raj in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced seniority list of workers as it stood on 1.10.2020 Ext. PW1/B and attendance sheets supplied by the D.M. Ext. PW1/C.

7. Respondent has examined Shri Jagdish Gautam, Divisional Manager, Forest Working Division Hamirpur, District Hamirpur, H.P. In his affidavit RW-1 reiterated the facts stated in the reply. He also stated on oath that the seniority list of daily wager Class-IV workers is not maintained in their office. It is further stated that notification of piece rate workers notified by the State Government for engagement of piece rate workers is also not available in their office.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Suresh Kumar has stated in his affidavit that he was appointed by the respondent *w.e.f.* 15.3.2014 on piece rate basis without any appointment letter and settled terms however he continued to work till March, 2018. He has also stated that he was allotted the work of extraction of resin every year on piece rate basis and payment was made to him as per piece rate fixed by the Government. He has reiterated in his affidavit that his services were terminated unlawfully by the respondent despite the fact that he had completed more than 240 days in each calendar year and in the last 12 calendar months preceding from the date of his illegal termination. He has also stated that he was asked to perform his duties under the control and supervision of contractor and on his refusal his services were terminated by the respondent. With regard to this contention raised by the petitioner, the respondent has asserted that petitioner was never appointed

as an employee by the forest corporation. The petitioner had moved an application, affidavit and conditional request *vide* which he agreed to work of resin extraction on sanctioned schedule rates by the H.P. Forest Corporation. Learned counsel for the respondent has submitted that the petitioner not being employee of the respondent the condition of working of 240 days is not liveable in the present case. Infact the work of extraction of resin is seasonal activity which is being conducted from the month of March to the month of November every year. In view of these facts petitioner cannot be considered as an employee and there was no employer and workman relationship between the respondent and the petitioner. The learned Authorized Representative/Counsel has relied upon the ratio laid down Hon'ble Supreme Court in **Bhilwara Dugdh Utpadak Sahkari S. Ltd. vs. Vinod Kumar Sharma through his LR's & Ors. 2011 LLR SC 1079** whereby the Hon'ble Supreme Court has held in para Nos. 4 and 5 which reads as under:—

- “4. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term of casual employees when in fact they are doing the work of regular employees.
5. This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers”.

In order to prove that there was contract with the respondent for yearly basis, the respondent has produced on record agreement letter Ext. R-1. It is asserted on behalf of the respondent that there was no “contract of service” between the respondent and the petitioner however there was “contract for service” on yearly basis. The Honble Supreme Court in catena of judgment has laid down, that to determine whether a working relationship is in the nature of a ‘contract of service’ or a ‘contract for service’ in each case has to be answered having regard to the surrounding facts involved in that particular working relationship. Common characteristics which have been observed to be included in contract of service/employer-employee relationship. (i) *The worker performs services in the employer's premises.* (ii) *The workers works on machines supplied by the employer* (iii) *The manner in which a worker is paid is irrelevant. A worker can be an employee even though he is paid piece-meal and not per day/month.* (iv) *The worker would be an employee if he has agreed to work personally, it is irrelevant if he takes assistance from other persons who work under him.* (v) *The employer has power of control in respect of the work that is to be done, as well as the manner/method in which the work is required to be done by the worker.* (vi) *The employer has the power to reject the end product of the worker if it does not conform to the instruction of the employer and the worker can be directed to re-work on the assignment which means control and supervision of the employer on the employee. The employer has the power to direct obligation to provide payment/remuneration to the worker. The degree of control and supervision by the employer on the worker would be different in different types of businesses.* (**Workmen of Nilgiri Co-operative Marketing Society Limited vs. State of Tamil Nadu and Ors., AIR 2004 SC 1639**), **Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments, 1974 AIR 37**, **Shining Tailors vs. Industrial Tribunal II, U.P. Lucknow and Ors. AIR 1984 SC 23**). Learned counsel for the respondent has relied upon the findings of Hon'ble Supreme Court in **Anil Bapurao Kanase vs. Krishna Sahkari Sakhar Karkhana Ltd. and Anr. AIR 1997 SC 2698** wherein the Hon'ble Supreme Court has held in para No. 3:—

“in *Morinda Co-op Sugar Mills Ltd. v. Ram Kishan*, (1995) 5 SCC 653: (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in

sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application".

The above ratio is not applicable to the fact of the case as the findings in above were in respect of closure of factory after crushing season and not retrenchment of workman.

11. Though it is submitted by the learned counsel for the respondent that the work of the petitioner was seasonal. It is however, it is pertinent to mention that RW1 Shri Jagdish Gautam, Divisional Manager, Forest Corporation has stated in his deposition that any document *i.e.* notification on piece rate workers notified by State Government was not available with their office. It is also important to peruse the cross-examination of RW1 Shri Jagdish Gautam. In his cross-examination, he has stated that the work of corporation collection of resin is seasonal work and the Assistant Manager, Jawalaji was directed to work the lot departmentally on sanctioned schedule of rate. As mentioned above, no notification in this regard was produced on record. He has admitted that they have not produced copy of schedule rate. He has also admitted that they have not produced the application to the department allegedly moved by the petitioner every year. He admitted that EPF of all the employees of the department was deducted and the EPF contribution of petitioner was also deducted from April, 2014 to November, 2017. He has denied that the petitioner has worked as daily wager however he admitted that department had made payment for work done by the petitioner. He has also stated that the work of petitioner was controlled and supervised by the Assistant Manager, Jawalaji though the work was on contract nature. He admitted that petitioner has never made any application during his service tenure. Applying the above tests laid down by the Hon'ble Supreme Court with regard to contract of employment it can be observed that the work of the petitioner were being carried out under direct supervision of the respondent. Material which was being used to work was also being supplied by the respondent. The payment though done on piece meal basis was also continued from March, 2014 to November, 2017. In the light of the above evidence it is clear that there was contract of service between the petitioner and the respondent and the petitioner was not merely working in contract for service. The nature of work being conducted by the petitioner was not independent and was under the direct control and supervision of the respondent hence petitioner was a workman under the Act.

12. In order to prove the continuous service the petitioner had duly produced the record of payment being made to him from the month of April, 2014 to the month of November, 2017. Even though the payment was being made and the work was being conducted for eight months in a year. It is clear that the petitioner had completed 240 days of work in each year of his employment and 240 days of work in 12 months period preceding his termination. Thus it can be held that he was in continuous service within the meaning of Clause 1 of Section 25-B of the Act.

13. The respondent has merely denied relationship of employer and employee between the petitioner and the respondent, no document pertaining to the termination or any benefits being provided in accordance with the provisions of Section 25-F have been produced before the court. In the light of these observations and the evidence which have been produced on record by the parties, it can be safely held that the termination of the services of the petitioner during March, 2018 by the respondent is in the violation of provisions of the Act.

Issue No. 2

14. Petitioner Suresh Kumar has stated on oath that since the termination of his services from the establishment of the respondent he had not been gainfully employed. There is no evidence

to controvert the contention made by the petitioner in his petition. The respondent has submitted the copy of seniority list Ext. PW1/B as it stood on 1.10.2020 where the names of the newly appointed person were reflected at serial no. 57 to 98. The above mentioned persons were appointed after the termination of the services of the petitioner in clear violation of Section 25-G of the Act. Thus it is proved that the termination of the petitioner was in violation of Sections 25-F, 25-G and 25-H of the Act. In the light of the above discussed evidence which is not controverted and disputed by the respondent the illegal termination of petitioner is set aside. He is entitled for reinstatement of his services, seniority, service benefits. Issues No.1 and 2 are decided in favour of the petitioner.

Issue No. 3

15. In view of findings on issues no.1 and 2 above, the claim petition is very much maintainable as the petitioner was not a mere contractor but his services were engaged as workman, hence this issue is decided in negative.

Relief

16. In view of my discussion on the above issues, the claim petition is succeed and allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination to the date of his reinstatement. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 57/2020
Date of Institution : 08.9.2020
Date of Decision : 29.6.2024

Shri Daljeet Singh s/o Shri Pallu Ram, r/o Village Hardeep Pur, P.O. Lagru, Tehsil Khundiyan, District Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil and District Hamirpur, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.
For Respondent : Sh. Vijay Mehra, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court the terms of reference are as under:—

“Whether the verbal termination of services of Shri Daljeet Singh s/o Shri Pallu Ram, r/o Village Hardeep Pur, P.O. Lagru, Tehsil Khundiyan, District Kangra, H.P. by the Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil & District Hamirpur, H.P. during March, 2018 without complying with the existing provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The brief facts as stated in the claim petition are that the petitioner Daljeet Singh s/o Shri Pallu Ram were appointed by the respondent *w.e.f.* 15th March, 2010 on piece rate basis without any appointment letter and he continued to work till March, 2018. It is submitted that during this period department made payment to petitioner on piece rate basis fixed by the department. The work was allotted to petitioner by the Forest Corporation every year of extraction of resin on piece rate with certain terms and conditions. It is submitted that the work and conduct of petitioner was satisfactory with entire certification of the department and the respondent from March, 2010 to 2018. He was never given any show cause notice, charge-sheet was not served on him neither any enquiry was conducted as per Industrial Employment Standing Order, 1946 relating to any misconduct during completed period of his services. The petitioner had completed more than 240 days in each calendar year as well as 12 preceding months from the date of his termination in the month of March, 2018. He has not provided duty by the Divisional Manager, Forest Corporation, Hamirpur in month of March, 2018 and who verbally stated to petitioner that department has received information from higher authority that no workmen have been engaged through department for extraction of resin and department has decided to engage workmen through labour contractor. The petitioner denied to work under control and supervision of contractor and due to this reason his services were unlawfully terminated by the respondent in the month of March, 2018. It is asserted that department was making payment to the petitioner every year in his bank account and he was also member of Provident Fund Scheme, 1952. The respondent deducted the provident fund of the petitioner and deposited before Provident Fund Commissioner and thus they cannot claim that he was not employee of the department. It is alleged that after terminating the services of the petitioner in March, 2018 he raised an industrial dispute vide demand notice dated 5.3.2019 and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dehra. Before termination of the services of the petitioner he was not given one month's notice or one month pay in lieu of notice period under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) nor he was paid any retrenchment compensation nor any information was sent to appropriate Government, Labour Commissioner as is mandatory under Section 25 (c) of the Act. The petitioner has alleged the violation of Section 25-F and Section 9-A alongwith principle of natural justice by the respondent. It is further alleged that at the time of his termination in the month of March, 2018 the contractor was engaged by the respondent by violating the principle of 'last come first go'. The contract agreement and list of contractor workers as well

as licence which has been obtained by the learned authority Labour Officer Bilaspur is also available with the respondent department along-with the list of regular workers of the department from the year 2010 onwards. The petitioner has alleged that the act of respondent amounted to unfair labour practices as services of the petitioner were terminated without following the mandatory provisions of the Act. After his termination he was not gainfully employed anywhere thus the petitioner is also entitled to reinstatement, continuity of service alongwith full back wages from the date of alleged unlawful termination i.e. March, 2018 till date.

3. In reply on behalf of the respondent preliminary objections qua maintainability have been raised. It is asserted that the respondent corporation is owned and controlled by State Government, H.P. and incorporated under the Companies Act, 1956. State of Himachal Pradesh has complete control over the respondent corporation since its inception. The work of timber and resin extraction is executed by the respondent corporation through tender and work is allotted to lowest rate tendered after completion of codal formalities. The work of resin extraction starts in the month of March and culminated in the month of November. It is further asserted that the petitioner had moved an application, affidavit and conditional request vide which he agreed to work for resin extraction on sanctioned schedule rate of H.P. Forest Corporation. Every year he would submit application for extraction of resin work to be awarded to him. It is asserted that the petitioner was never appointed by the Forest Corporation as member or employee of the company. Therefore the condition of 240 days is not liveable in this case. The petitioner was accordingly engaged for seasonal resin extraction work on the basis of his request. It is also asserted that the respondent Forest is Corporation earning its own revenue and as has been registered as a company the government Agency and working on the basis of its own profit and loss. Therefore uneconomical work is not allotted by the management of company. It is further denied that the services of the petitioner were terminated unlawfully. According to the respondent every amount due to the petitioner have been released to him and since he was not appointment by the respondent corporation he cannot be considered as employee of the corporation. Other allegations made in the petition were denied. The respondent also asserted that they had invited tenders and obtained minus 30% from schedule rate which was already given to the petitioner. Keeping in view the above the corporation had sustained loss of 30% and 12% employer share. It is asserted that financial loss was being borne by the corporation due to the supplying of the material to the petitioner. Thus action of the corporation is asserted to be lawful. It is prayed that the petition may be dismissed.

4. By way of rejoinder the preliminary objections raised by the respondent has been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the verbal termination of services of the petitioner during March, 2018 by the respondent is violation of the provisions contained under the Act, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*

Relief.

6. The petitioner Daljeet Singh in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced seniority list of

workers as it stood on 1.10.2020 Ext. PW1/B and attendance sheets supplied by the D.M. Ext. PW1/C.

7. Respondent has examined Shri Jagdish Gautam, Divisional Manager, Forest Working Division Hamirpur, District Hamirpur, H.P. In his affidavit RW-1 reiterated the facts stated in the reply. He also stated on oath that the seniority list of daily wager Class-IV workers is not maintained in their office. It is further stated that notification of piece rate workers notified by the State Government for engagement of piece rate workers is also not available in their office.

8. I have heard the learned AR/Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Daljeet Singh has stated in his affidavit that he was appointed by the respondent *w.e.f.* 15.3.2010 on piece rate basis without any appointment letter and settled terms however he continued to work till March, 2018. He has also stated that he was allotted the work of extraction of resin every year on piece rate basis and payment was made to him as per piece rate fixed by the Government. He has reiterated in his affidavit that his services were terminated unlawfully by the respondent despite the fact that he had completed more than 240 days in each calendar year and in the last 12 calendar months preceding from the date of his illegal termination. He has also stated that he was asked to perform his duties under the control and supervision of contractor and on his refusal his services were terminated by the respondent. With regard to this contention raised by the petitioner, the respondent has asserted that petitioner was never appointed as an employee by the forest corporation. The petitioner had moved an application, affidavit and conditional request vide which he agreed to work of resin extraction on sanctioned schedule rates by the H.P. Forest Corporation. Learned counsel for the respondent has submitted that the petitioner not being employee of the respondent the condition of working of 240 days is not liveable in the present case. Infact the work of extraction of resin is seasonal activity which is being conducted from the month of March to the month of November every year. In view of these facts petitioner cannot be considered as an employee and there was no employer and workman relationship between the respondent and the petitioner. The learned Authorized Representative/Counsel has relied upon the ratio laid down Hon'ble Supreme Court in **Bhilwara Dugdh Utpadak Sahkari S. Ltd. vs. Vinod Kumar Sharma through his LRs & Ors. 2011 LLR SC 1079** whereby the Hon'ble Supreme Court has held in para Nos. 4 and 5 which reads as under:—

“4. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence,

protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term of casual employees when in fact they are doing the work of regular employees.

5. This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers”.

In order to prove that there was contract with the respondent for yearly basis, the respondent has produced on record affidavit Mark-R-1 and agreement letter Ext. R-1. It is asserted on behalf of the respondent that there was no “contract of service” between the respondent and the petitioner however there was “contract for service” on yearly basis. The Honble Supreme Court in catena of judgment has laid down, that to determine whether a working relationship is in the nature of a ‘contact of service’ or a ‘contract for service’ in each case has to be answered having regard to the surrounding facts involved in that particular working relationship. Common characteristics which have been observed to be included in contract of service/employer-employee relationship. (i) *The worker performs services in the employer’s premises.* (ii) *The workers works on machines supplied by the employer* (iii) *The manner in which a worker is paid is irrelevant. A worker can be an employee even though he is paid piece-meal and not per day/month.* (iv) *The worker would be an employee if he has agreed to work personally, it is irrelevant if he takes assistance from other persons who work under him.* (v) *The employer has power of control in respect of the work that is to be done, as well as the manner/method in which the work is required to be done by the worker.* (vi) *The employer has the power to reject the end product of the worker if it does not conform to the instruction of the employer and the worker can be directed to re-work on the assignment which means control and supervision of the employer on the employee. The employer has the power to direct obligation to provide payment/remuneration to the worker. The degree of control and supervision by the employer on the worker would be different in different types of businesses.* (***Workmen of Nilgiri Co-operative Marketing Society Limited vs. State of Tamil Nadu and Ors., AIR 2004 SC 1639***), ***Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments, 1974 AIR 37, Shining Tailors vs. Industrial Tribunal II, U.P. Lucknow and Ors. AIR 1984 SC 23***). Learned counsel for the respondent has relied upon the findings of Hon’ble Supreme Court in ***Anil Bapurao Kanase vs. Krishna Sahkari Sakhar Karkhana Ltd. and Anr. AIR 1997 SC 2698*** wherein the Hon’ble Supreme Court has held in para No.3:—

“in *Morinda Co-op Sugar Mills Ltd. v. Ram Kishan*, (1995) 5 SCC 653: (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not ‘retrenchment’ within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application”.

The above ratio is not applicable to the fact of the case as the findings in above were in respect of closure of factory after crushing season and not retrenchment of workman.

11. Though it is submitted by the learned counsel for the respondent that the work of the petitioner was seasonal. It is however, it is pertinent to mention that RW1 Shri Jagdish Gautam, Divisional Manager, Forest Corporation has stated in his deposition that any document *i.e.* notification on piece rate workers notified by State Government was not available with their office.

It is also important to peruse the cross-examination of RW1 Shri Jagdish Gautam. In his cross-examination, he has stated that the work of corporation collection of resin is seasonal work and the Assistant Manager, Jawalaji was directed to work the lot departmentally on sanctioned schedule of rate. As mentioned above, no notification in this regard was produced on record. He has admitted that they have not produced copy of schedule rate. He has also admitted that they have not produced the application to the department allegedly moved by the petitioner every year. He admitted that EPF of all the employees of the department was deducted and the EPF contribution of petitioner was also deducted from March, 2010 to March, 2018. He has denied that the petitioner has worked as daily wager however he admitted that department had made payment for work done by the petitioner. He has also stated that the work of petitioner was controlled and supervised by the Assistant Manager, Jawalaji though the work was on contract nature. He admitted that petitioner has never made any application during his service tenure. Applying the above tests laid down by the Hon'ble Supreme Court with regard to contract of employment it can be observed that the work of the petitioner were being carried out under direct supervision of the respondent. Material which was being used to work was also being supplied by the respondent. The payment though done on piece meal basis was also continued from March, 2010 to March, 2018. In the light of the above evidence it is clear that there was contract of service between the petitioner and the respondent and the petitioner was not merely working in contract for service. The nature of work being conducted by the petitioner was not independent and was under the direct control and supervision of the respondent hence petitioner was a workman under the Act.

12. In order to prove the continuous service the petitioner had duly produced the record of payment being made to him from the month of April, 2010 to the month of November, 2017. Even though the payment was being made and the work was being conducted for eight months in a year. It is clear that the petitioner had completed 240 days of work in each year of his employment and 240 days of work in 12 months period preceding his termination. Thus it can be held that he was in continuous service within the meaning of Clause 1 of Section 25-B of the Act.

13. The respondent has merely denied relationship of employer and employee between the petitioner and the respondent, no document pertaining to the termination or any benefits being provided in accordance with the provisions of Section 25-F have been produced before the court. In the light of these observations and the evidence which have been produced on record by the parties, it can be safely held that the termination of the services of the petitioner during March, 2018 by the respondent is in the violation of provisions of the Act.

Issue No. 2

14. Petitioner Daljeet Singh has stated on oath that since the termination of his services from the establishment of the respondent he had not been gainfully employed. There is no evidence to controvert the contention made by the petitioner in his petition. The respondent has submitted the copy of seniority list Ext. PW1/B as it stood on 1.10.2020 where the names of the newly appointed person were reflected at serial no.25 to 98. The above mentioned persons were appointed after the termination of the services of the petitioner in clear violation of Section 25-G of the Act. Thus it is proved that the termination of the petitioner was in violation of Sections 25-F, 25-G and 25-H of the Act. In the light of the above discussed evidence which is not controverted and disputed by the respondent the illegal termination of petitioner is set aside. He is entitled for reinstatement of his services, seniority, service benefits. Issues No.1 and 2 are decided in favour of the petitioner.

Issue No. 3

15. In view of findings on issues no.1 and 2 above, the claim petition is very much maintainable as the petitioner was not a mere contractor but his services were engaged as workman, hence this issue is decided in negative.

Relief

16. In view of my discussion on the above issues, the claim petition is succeed and allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination to the date of his reinstatement. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 59/2020
Date of Institution : 08.9.2020
Date of Decision : 29.6.2024

Shri Hem Raj s/o Shri Laxman Dass, r/o Village Davgaon, P.O. Baggi, Tehsil Khundiyan,
District Kangra, H.P. . . . *Petitioner.*

Versus

The Divisional Manager, Forest Corporation Division, Hamirpur, Tehsil and District
Hamirpur, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.
For Respondent : Sh. Vijay Mehra, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court the terms of reference are as under:—

“Whether the verbal termination of services of Shri Hem Raj s/o Shri Laxman Dass, r/o Village Devgaon, P.O. Baggi, Tehsil Khundiyan, District Kangra, H.P. by the Divisional

Manager, Forest Corporation Division, Hamirpur, Tehsil & District Hamirpur, H.P. during March, 2018 without complying with the existing provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the petitioner Hem Raj s/o Sh. Laxman Dass were appointed by the respondent *w.e.f.* 15th March, 2014 on piece rate basis without any appointment letter and he continued to work till February, 2018. It is submitted that during this period department made payment to petitioner on piece rate basis fixed by the department. The work was allotted to petitioner by the Forest Corporation every year of extraction of resin on piece rate with certain terms and conditions. It is submitted that the work and conduct of petitioner was satisfactory with entire certification of the department and the respondent from March, 2014 to 2018. He was never given any show cause notice, charge-sheet was not served on him neither any enquiry was conducted as per Industrial Employment Standing Order, 1946 relating to any misconduct during completed period of his services. The petitioner had completed more than 240 days in each calendar year as well as 12 preceding months from the date of his termination in the month of March, 2018. He has not provided duty by the Divisional Manager, Forest Corporation, Hamirpur in month of March, 2018 and who verbally stated to petitioner that department has received information from higher authority that no workmen have been engaged through department for extraction of resin and department has decided to engage workmen through labour contractor. The petitioner denied to work under control and supervision of contractor and due to this reason his services were unlawfully terminated by the respondent in the month of March, 2018. It is asserted that department was making payment to the petitioner every year in his bank account and he was also member of Provident Fund Scheme, 1952. The respondent deducted the provident fund of the petitioner and deposited before Provident Fund Commissioner and thus they cannot claim that he was not employee of the department. It is alleged that after terminating the services of the petitioner in March, 2018 he raised an industrial dispute vide demand notice dated 5.3.2019 and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dehra. Before termination of the services of the petitioner he was not given one month's notice or one month pay in lieu of notice period under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) nor he was paid any retrenchment compensation nor any information was sent to appropriate Government, Labour Commissioner as is mandatory under Section 25 (c) of the Act. The petitioner has alleged the violation of Section 25-F and Section 9-A alongwith principle of natural justice by the respondent. It is further alleged that at the time of his termination in the month of March, 2018 the contractor was engaged by the respondent by violating the principle of 'last come first go'. The contract agreement and list of contractor workers as well as licence which has been obtained by the learned authority Labour Officer Bilaspur is also available with the respondent department along-with the list of regular workers of the department from the year 2013 onwards. The petitioner has alleged that the act of respondent amounted to unfair labour practices as services of the petitioner were terminated without following the mandatory provisions of the Act. After his termination he was not gainfully employed anywhere thus the petitioner is also entitled to reinstatement, continuity of service alongwith full back wages from the date of alleged unlawful termination i.e. March, 2018 till date.

3. In reply on behalf of the respondent preliminary objections qua maintainability have been raised. It is asserted that the respondent corporation is owned and controlled by State Government, H.P. and incorporated under the Companies Act, 1956. State of Himachal Pradesh has complete control over the respondent corporation since its inception. The work of timber and resin extraction is executed by the respondent corporation through tender and work is allotted to lowest rate tendered after completion of codal formalities. The work of resin extraction starts in the month of March and culminated in the month of November. It is further asserted that the petitioner had

moved an application, affidavit and conditional request vide which he agreed to work for resin extraction on sanctioned schedule rate of H.P. Forest Corporation. Every year he would submit application for extraction of resin work to be awarded to him. It is asserted that the petitioner was never appointed by the Forest Corporation as member or employee of the company. Therefore the condition of 240 days is not liveable in this case. The petitioner was accordingly engaged for seasonal resin extraction work on the basis of his request. It is also asserted that the respondent Forest is Corporation earning its own revenue and as has been registered as a company the government Agency and working on the basis of its own profit and loss. Therefore uneconomical work is not allotted by the management of company. It is further denied that the services of the petitioner were terminated unlawfully. According to the respondent every amount due to the petitioner have been released to him and since he was not appointment by the respondent corporation he cannot be considered as employee of the corporation. Other allegations made in the petition were denied. The respondent also asserted that they had invited tenders and obtained minus 30% from schedule rate which was already given to the petitioner. Keeping in view the above the corporation had sustained loss of 30% and 12% employer share. It is asserted that financial loss was being borne by the corporation due to the supplying of the material to the petitioner. Thus action of the corporation is asserted to be lawful. It is prayed that the petition may be dismissed.

4. By way of rejoinder the preliminary objections raised by the respondent has been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the verbal termination of services of the petitioner during March, 2018 by the respondent is violation of the provisions contained under the Act, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? .. *OPP.*
3. Whether the claim petition is not maintainable, as alleged? .. *OPR.*

Relief.

6. The petitioner Hem Raj in order to prove his case produced his affidavit Ext. PW1/A wherein he has reiterated the facts stated in the petition. He also produced seniority list of workers as it stood on 1.10.2020 Ext. PW1/B and attendance sheets supplied by the D.M. Ext. PW1/C.

7. Respondent has examined Shri Jagdish Gautam, Divisional Manager, Forest Working Division Hamirpur, District Hamirpur, H.P. In his affidavit RW-1 reiterated the facts stated in the reply. He also stated on oath that the seniority list of daily wager Class-IV workers is not maintained in their office. It is further stated that notification of piece rate workers notified by the State Government for engagement of piece rate workers is also not available in their office.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS*Issue No. 1*

10. Petitioner Hem Raj has stated in his affidavit that he was appointed by the respondent *w.e.f.* 15.2.2014 on piece rate basis without any appointment letter and settled terms however he continued to work till March, 2018. He has also stated that he was allotted the work of extraction of resin every year on piece rate basis and payment was made to him as per piece rate fixed by the Government. He has reiterated in his affidavit that his services were terminated unlawfully by the respondent despite the fact that he had completed more than 240 days in each calendar year and in the last 12 calendar months preceding from the date of his illegal termination. He has also stated that he was asked to perform his duties under the control and supervision of contractor and on his refusal his services were terminated by the respondent. With regard to this contention raised by the petitioner, the respondent has asserted that petitioner was never appointed as an employee by the forest corporation. The petitioner had moved an application, affidavit and conditional request vide which he agreed to work of resin extraction on sanctioned schedule rates by the H.P. Forest Corporation. Learned counsel for the respondent has submitted that the petitioner not being employee of the respondent the condition of working of 240 days is not liveable in the present case. Infact the work of extraction of resin is seasonal activity which is being conducted from the month of March to the month of November every year. In view of these facts petitioner cannot be considered as an employee and there was no employer and workman relationship between the respondent and the petitioner. The learned Authorized Representative/Counsel has relied upon the ratio laid down Hon'ble Supreme Court in **Bhilwara Dugdh Utpadak Sahkari S. Ltd. vs. Vinod Kumar Sharma through his LRs & Ors. 2011 LLR SC 1079** whereby the Hon'ble Supreme Court has held in para Nos. 4 and 5 which reads as under:—

“4. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term of casual employees when in fact they are doing the work of regular employees.

5. This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers”.

In order to prove that there was contract with the respondent for yearly basis, the respondent has produced on record affidavit Mark-1 and agreement letter Ext. R-1. It is asserted on behalf of the respondent that there was no “contract of service” between the respondent and the petitioner however there was “contract for service” on yearly basis. The Honble Supreme Court in catena of judgment has laid down, that to determine whether a working relationship is in the nature of a ‘contact of service’ or a ‘contract for service’ in each case has to be answered having regard to the surrounding facts involved in that particular working relationship. Common characteristics which have been observed to be included in contract of service/employer-employee relationship. (i) *The worker performs services in the employer’s premises.* (ii) *The workers works on machines supplied*

by the employer (iii) The manner in which a worker is paid is irrelevant. A worker can be an employee even though he is paid piece-meal and not per day/month. (iv) The worker would be an employee if he has agreed to work personally, it is irrelevant if he takes assistance from other persons who work under him. (v) The employer has power of control in respect of the work that is to be done, as well as the manner/method in which the work is required to be done by the worker. (vi) The employer has the power to reject the end product of the worker if it does not conform to the instruction of the employer and the worker can be directed to re-work on the assignment which means control and supervision of the employer on the employee. The employer has the power to direct obligation to provide payment/remuneration to the worker. The degree of control and supervision by the employer on the worker would be different in different types of businesses. (**Workmen of Nilgiri Co-operative Marketing Society Limited vs. State of Tamil Nadu and Ors., AIR 2004 SC 1639**), **Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments, 1974 AIR 37**, **Shining Tailors vs. Industrial Tribunal II, U.P. Lucknow and Ors. AIR 1984 SC 23**). Learned counsel for the respondent has relied upon the findings of Hon'ble Supreme Court in **Anil Bapurao Kanase vs. Krishna Sahkari Sakhar Karkhana Ltd. and Anr. AIR 1997 SC 2698** wherein the Hon'ble Supreme Court has held in para No.3:—

“in *Morinda Co-op Sugar Mills Ltd. v. Ram Kishan*, (1995) 5 SCC 653: (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not ‘retrenchment’ within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application”.

The above ratio is not applicable to the fact of the case as the findings in above were in respect of closure of factory after crushing season and not retrenchment of workman.

11. Though it is submitted by the learned counsel for the respondent that the work of the petitioner was seasonal. It is however, it is pertinent to mention that RW1 Shri Jagdish Gautam, Divisional Manager, Forest Corporation has stated in his deposition that any document *i.e.* notification on piece rate workers notified by State Government was not available with their office. It is also important to peruse the cross-examination of RW1 Shri Jagdish Gautam. In his cross-examination, he has stated that the work of corporation collection of resin is seasonal work and the Assistant Manager, Jawalaji was directed to work the lot departmentally on sanctioned schedule of rate. As mentioned above, no notification in this regard was produced on record. He has admitted that they have not produced copy of schedule rate. He has also admitted that they have not produced the application to the department allegedly moved by the petitioner every year. He admitted that EPF of all the employees of the department was deducted and the EPF contribution of petitioner was also deducted from April, 2014 to November, 2017. He has denied that the petitioner has worked as daily wager however he admitted that department had made payment for work done by the petitioner. He has also stated that the work of petitioner was controlled and supervised by the Assistant Manager, Jawalaji though the work was on contract nature. He admitted that petitioner has never made any application during his service tenure. Applying the above tests laid down by the Hon'ble Supreme Court with regard to contract of employment it can be observed that the work of the petitioner were being carried out under direct supervision of the respondent. Material which was being used to work was also being supplied by the respondent. The payment though done on piece meal basis was also continued from March, 2014 to November, 2017. In the light of the above evidence it is clear that there was contract of service between the petitioner and the respondent and the petitioner was not merely working in contract for service. The nature of work being conducted by the petitioner was not independent and was under the direct control and supervision of the respondent hence petitioner was a workman under the Act.

12. In order to prove the continuous service the petitioner had duly produced the record of payment being made to him from the month of April, 2014 to the month of November, 2017. Even though the payment was being made and the work was being conducted for eight months in a year. It is clear that the petitioner had completed 240 days of work in each year of his employment and 240 days of work in 12 months period preceding his termination. Thus it can be held that he was in continuous service within the meaning of Clause 1 of Section 25-B of the Act.

13. The respondent has merely denied relationship of employer and employee between the petitioner and the respondent, no document pertaining to the termination or any benefits being provided in accordance with the provisions of Section 25-F have been produced before the court. In the light of these observations and the evidence which have been produced on record by the parties, it can be safely held that the termination of the services of the petitioner during March, 2018 by the respondent is in the violation of provisions of the Act.

Issue No.2

14. Petitioner Hem Raj has stated on oath that since the termination of his services from the establishment of the respondent he had not been gainfully employed. There is no evidence to controvert the contention made by the petitioner in his petition. The respondent has submitted the copy of seniority list Ext. PW1/B as it stood on 1.10.2020 where the names of the newly appointed person were reflected at serial no.57 to 98. The above mentioned persons were appointed after the termination of the services of the petitioner in clear violation of Section 25-G of the Act. Thus it is proved that the termination of the petitioner was in violation of Sections 25-F, 25-G and 25-H of the Act. In the light of the above discussed evidence which is not controverted and disputed by the respondent the illegal termination of petitioner is set aside. He is entitled for reinstatement of his services, seniority, service benefits. Issues No.1 and 2 are decided in favour of the petitioner.

Issue No.3

15. In view of findings on issues no.1 and 2 above, the claim petition is very much maintainable as the petitioner was not a mere contractor but his services were engaged as workman, hence this issue is decided in negative.

Relief

16. In view of my discussion on the above issues, the claim petition is succeed and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. He is also held entitled for seniority and continuity in service from the date of his illegal termination to the date of his reinstatement except back wages. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 80/2018

Date of Institution : 14.8.2018

Date of Decision : 29.6.2024

Shri Man Singh s/o Shri Kahn Singh, r/o Village Rampur, P.O. Gada Gussain, Tehsil Bali Chowki, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Chief Medical Officer (CMO), District Mandi, H.P.
 2. The Block Medical Officer (BMO), Janjehali, Mandi-cum-Chairman/Member Secretary of RKS (Rogi Kalyan Samiti), Janjehali, District Mandi, H.P.
 3. The Medical Officer, PHC Gada Gossain, Bali Chowki, Mandi, H.P.
- . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. Ravi Kumar, Ld. Adv.

AWARD

The above tilted case has been referred by the appropriate Government/Labour Commissioner, H.P. to this Court, the terms of reference are as under:—

“Whether termination of services of Shri Man Singh s/o Shri Kahn Singh, r/o Village Rampur, P.O. Gada Gussain, Tehsil Bali Chowki, District Mandi, H.P. (who was employed as sweeper-cum-helper) during November, 2016 (as alleged by workman) by (i) the Chief Medical Officer (CMO), District Mandi, H.P. (ii) the Block Medical Officer (BMO), Janjehali, Mandi-cum-Chairman/Member Secretary of RKS (Rogi Kalyan Samiti), Janjehali, District Mandi, H.P. (iii) The Medical Officer, PHC Gada Gossain, Bali Chowki, Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The brief facts as stated in the claim petition are that the services of the petitioner were voluntarily engaged as sweeper by the respondent *w.e.f.* 1.12.2006 at Primary Health Centre, Gada Gussain, District Mandi under the immediate control of Block Medical Officer, Janjehali and petitioner continuously discharged his duties as sweeper on voluntarily basis upto November, 2009. It is submitted that the petitioner performed his duties with utmost honesty and his work and conduct was appreciated by the hospital management and certificate issued in his favour on 23.6.2007. Initially he was engaged without any remuneration/salary but assurance was given to

him then by respondent no. 3 Pawan Kumar Kaundal that soon after his engagement he would be observed against vacant post of sweeper carrying a regular scale of pay. He was also assured that if it was not possible for certain reason then wages at minimum prescribed rate would be given to the petitioner of whole services. In view of the aforesaid assurance the petitioner continued to discharge his duties *w.e.f.* 1.12.2006 to November, 2009 and without any breaks and remuneration *w.e.f.* December, 2009 he was engaged as sweeper-cum-helper under Rogi Kalyan Samiti in PHC Gada Gussain in the same hospital where he earlier worked on voluntarily basis on assurance that he would be appointed on daily wages basis. He was given a salary of Rs.1200/- per month. It is further submitted that he continued to work *w.e.f.* December, 2009 to November, 2016 but his services were not converted from part-time to daily wager. It is alleged that the respondents ousted the petitioner from his services without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). After termination of the services of the petitioner he came to know that his services have been terminated in violation of Sections 25-G of the Act and persons junior to him in sweeper category have been retained in service. In order to make sure the department violated the provisions of Section 25-G of the Act, his brother applied for information under RTI Act but the said information was not supplied within the stipulated time. After the termination of his services Smt. Banti Devi was engaged as daily wager in his place without affording any opportunity of re-employment to him. In view of these allegations the petitioner has prayed that the termination of the petitioner may be set aside and declare as illegal. The petitioner may be reinstated in the service alongwith full back wages, seniority and continuity in service and consequential benefits.

3. In reply to the claim petition filed on behalf of the respondents preliminary objections qua maintainability, locus standi, jurisdiction and non joinder of necessary party have been raised. It is asserted that the petitioner was neither appointed by Rogi Kalyan Samiti nor any letter of appointment was issued in his favour. He had expressed his willingness to work as volunteer and in view of his request he was allotted to work as sweeper on volunteer basis till the joining or appointment of sweeper by the competent authority *i.e.* Director Health Services, Himachal Pradesh, Shimla-09. The other allegations made in the petition have been denied parawise and it is prayed that petition deserve to be dismissed.

4. In the rejoinder the preliminary objections raised by the respondents have been denied and the facts stated in the petition have been reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of services of the petitioner by the respondents during November, 2016 is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
4. Whether the petitioner has no locus standi to file the present case, as alleged? . . . *OPR.*
5. Whether this court has no jurisdiction to entertain the present case, as alleged? . . . *OPR.*

6. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? . . . *OPR.*

7. Relief.

6. The petitioner in order to prove his case produced evidence by way of affidavit Ext. PW1/A wherein he reiterated the facts stated in the petition. He also tendered certificate Ext. PW1/B, letter dated 17.1.2017 Ext. PW1/C, letter dated 21.3.2018 Ext. PW1/D, letter dated 1.4.2017 Ext. PW1/E, letter dated 15.12.2009 Ext. PW1/F, failure report Ext. PW1/G, failure report dated 26.11.2019 Ext. PW1/H, demand notice dated 11.9.2017 Ext. PW1/J, reply to demand notice dated 26.10.2017 Ext. PW1/K, reply to demand notice dated 19.0.2017 Ext. PW1/L and letter dated 21.9.2017 Ext. PW1/M.

7. The respondent in order to establish their stand have examined Dr. Devashish Thakur, Medical Officer CHC Gadagusaini, District Mandi, H.P. as RW1 who produced his affidavit RW-1. He also reiterated the facts stated in the reply by way of his affidavit and produced on record application Ext. R-1, resolution Ext. R-2, information under RTI dated 9.3.2017 Ext. R-3, letter dated 21.3.2017 Ext. R-4 and office memorandum Ext. R-5.

8. I have heard the learned Authorized Representative/Counsel as well learned ADA for the respondents at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No. 2 : Yes

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : No

Relief : Claim petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. The petitioner has stated on oath that he was voluntarily engaged as sweeper *w.e.f.* 1.12.2006 at Primary Health Centre, Gada Gussain, District Mandi under the control of Block Medical Officer, Janjehali. RW1 Dr. Devashish Thakur, Medical Officer, CHC Gadagusaini, District Mandi, H.P. admitted that the services of the petitioner were being obtained but he asserted that the petitioner was not engaged as safai karamchari as he was working voluntarily. He admitted that the petitioner worked voluntarily from December, 2006 to November, 2012 without salary. Though he denied that petitioner was working from 10 A.M. to 5 P.M. every day. He feigned ignorance to the suggestion that the petitioner worked from 10 A.M. to 4 P.M.. He admits that

petitioner worked from year 2006 upto year 2016 and during this period no other safai karamchhari was employed at the hospital. He also mentions that petitioner was paid Rs. 600/- per month from year 2012 to 2016 but no last payment record is produced in the court. He admits that work of the petitioner was being supervised by the department.

11. Section 2 (s) of the Industrial Disputes Act, 1947 described the definition of workman which reads as under:—

“2(s) workman means any person (including any apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment, has led to that dispute, but does not include any such person-

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison, or
- (iii) Who is employed mainly in a managerial or administrative capacity, or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]”

12. Hon’ble Supreme Court in **Devinder Singh vs. Municipal Council, Sanaur, 2011 (6) SCC 584** has held in paras no.13 and 14:—

- 13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.
- 14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

13. The fact that the petitioner voluntarily deployed and no appointment letter was issued is immaterial as he continued to work under the supervision of Block Medical Officer, Janjehali since 2006 to 2016 and he was being paid remuneration even though the meagre amount of Rs. 600/- per month since 2012 to 2016. The petitioner falls within the definition of workman under the Industrial Disputes Act, 1947. He undoubtedly completed the period of continuous service under Section 25-B of the Act. The respondents were under obligation to comply with the provisions of Section 25-F of the Act. Hon’ble Supreme Court in **Their Workmen through the Joint Secretary (Welfare), Food Corporation of India Executive Staff Union vs. Employer in**

relation to the Management of the Food Corporation of India & Anr., 2023 LLR 945 has clearly held that the retrenchment of the workman without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 is illegal.

14. Admittedly no notice was ever issued to the petitioner qua work and conduct and the plea of respondents that the petitioner had voluntarily left the work of his own is not substantiated but from the documentary evidence on the case file. Hon'ble Supreme Court in **Durgapur Casual Workers' Union & Ors. vs. Food Corporation of India & Ors., 2015 LLR 219** has held that long continuous casualization amounts to unfair labour practice in view of item No.10, part I of Fifth Schedule of Industrial Disputes Act. The Hon'ble Apex Court further held that regularization of casual or temporary or daily wagger who has a long service to his crediting cannot be denied on the ground that the appointment by not following the due process as per policies of the company of the employer or it would amount to backdoor entry. In present case it is admitted fact that no regular safai karamchari was engaged at the hospital from the year 2006 to 2016 and there is nothing on record that there was a post of safai karamchari of on part-time or daily wage in the hospital. Admittedly safai karamchari Smt. Banti Devi joined the hospital on daily wages. In fact Smt. Banti Devi and Smt. Savitri Devi were part-time employees at PHC Thunag but the office memorandum Ext. R-5 shows that person who had joined subsequent to the petitioner were converted from part time to daily wagger employee and Smt. Banti Devi was relocated from PHC Thunag to PHC Gada Gussain where the petitioner was already rendering his services as safai karamchari since year 2006. Thus there is clear violation of Section 25-G and 25-H of the Act. The evidence on record proves that the petitioner was workman employed by the respondent and his termination was illegal. Thus issue no.1 is decided in favour of the petitioner.

Issue No. 2

15. Hon'ble Supreme Court in **Divisional Manager, New India Assurance Company Limited vs. A. Sankaralingam, (2009) 1 SCC (L&S) 55**, has held in para No.12 which reads thus:—

“In Ram Lakhan case, the issue did come up before this Court and while construing the scope of Section 2(s) and Section 25-B of the Act, this Court observed that a person working on a part-time basis could not stricto sensu claim to be in continuous employment of the employer but the larger question as to whether such an employee could be a workman under Section 2(s) of the Act so as to claim benefit of Section 25-F thereof was being left open for future discussion. As already held above on facts, we have endorsed the view of the High Court that the workman had, in fact, been working virtually on a full-time basis till 5 p.m. and had worked continuously for more than 3 years from 2.1.1986 to 15.3.1989”.

16. The Hon'ble Apex Court has further observed in para No.18 which reads as under:

“18. The question as to whether a part-time workman would be covered within the definition in Section 2(s) of the Act and whether he would be entitled to the benefit of continuous service under Section 25-B and the benefit of Section 25-F, is answered in favour of the respondent workman. The appeal is accordingly dismissed”.

17. It has been observed in detailed findings on issue no.1 above that the services rendered by the petitioner made him fall within the category of workman under the Act. He had worked under the direct control and supervision of the respondents and was being paid remuneration. Since the termination of his services is illegal and not in accordance with the provisions of the Act, the petitioner is held entitled for reinstatement with seniority and continuity in service and all the

consequential benefits since November, 2016. Initial burden to prove that petitioner was not gainfully employed since his disengagement placed on workman has been discharged by him as he has stated in affidavit that since time of his illegal termination till the date he has not been gainfully employed in any other activity leading to earning of livelihood. No specific suggestion has been put to workman in his cross-examination that he was gainfully employed during relevant period. No positive evidence in this regard was produced by the respondent hence in these circumstances the petitioner is held entitled for 50% of back wages since the date of his termination till his reinstatement. Hon'ble Supreme Court in **Novartis India Ltd. vs. State of West Bengal and others, Civil Appeal No.7011 of 2008** in paras no. 36, 37 & 38 has held as under:—

36. The workmen had pleaded that they remained unemployed. They stated so in their respective depositions. The fact that they survived and did not die of starvation itself could not be a ground for denying back wages to them. Even an unemployed person has a right to survive. He may survive on his past savings. He may beg or borrow but so long as he has not been employed, back wages, subject to just exceptions, should not be denied. An award of reinstatement in service was denied to them only because in the meanwhile, they attained their age of superannuation.
37. Back wages in a situation of this nature had to be granted to respondents by way of compensation. If the principle of grant of compensation in a case of this nature is to be applied, indisputably having regard to the fact situation obtaining herein, namely, that they were doing a specialized job and were to reach their age of superannuation within a few years, grant of back wages was the only relief which could have been granted. It was furthermore not expected that they would get an alternative employment as they were superannuated. Burden of proof was undoubtedly upon the workmen. The said burden, however, was a negative one. Once they discharged their burden by deposing before the Tribunal, it shifted to the employer to show that their contention that they had not been employed, 23 was incorrect. No witness was examined on behalf of the employer. Even there was no pleading in that behalf.
38. Respondents were in private employment and not in public employment. Their services were permanent in nature. The termination of their services was held to be illegal as prior to issuance of the orders, no enquiry had been conducted. The order of discharge was, thus, void ab initio. Back wages, therefore, could have been granted from the date of termination of service”.

18. The issue No.2 is accordingly decided in favour of the petitioner.

Issues No. 3 to 6

19. All the issues are taken up together for the purpose of adjudication.

20. The primary claim of the respondents was that the petitioner has entered and got involved in rendering his services in the hospital on voluntary basis. It has been discussed while deciding issue no.1 that of service being provided by the respondents was voluntarily in nature but he had worked under direct control and supervision of the respondents and was being paid remuneration for his work subsequent to the year 2012. He worked continuously till the year 2016 whereby his services were terminated without following due procedure. In the light of the evidence produced before this court the claim pursuant to the reference made is maintainable. The petitioner falling within the definition of workman has locus standi to file the present petition. There is

nothing on record to establish that the petition was bad from the non joinder of any necessary party. Thus issues no.3 and 4 are decided in favour of the petitioner and against the respondents.

Relief

21. In view of my findings on the issues no. 1 to 6 above, the claim petition is allowed and the respondents are directed to reinstate the services of the petitioner forthwith with 50% back wages, seniority, continuity in service and all consequential benefits. Parties are left to bear their own costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of June, 2024.

Sd/-
(PARVEEN CHAUHAN)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**Before Shri Jagpal Singh, Executive Magistrate, (Tehsildar), Kasauli,
District Solan, Himachal Pradesh**

<u>Case No.</u>	<u>Date of Institution</u>	<u>Date of Decision</u>
36/2024	13-12-2024	Pending for 17-01-2025

Smt. Nirmla Devi d/o Sh. Radha Krishan, r/o Village Rajri, P.O. Jabli, Tehsil Kasauli,
District Solan, Himachal Pradesh . .*Applicant.*

Versus

General Public . .*Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Smt. Nirmla Devi d/o Sh. Radha Krishan, r/o Village Rajri, P.O. Jabli, Tehsil Kasauli, District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavits and other documents stating therein that her birth on 13-12-1969 at Village Rajri, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. but her date of birth could not registered in the record of Gram Panchayat Jabli, Tehsil Kasauli, within stipulated period. Hence she prayed for passing necessary order to the Secretary, Births & Deaths Registration, Gram Panchayat Jabli, Tehsil Kasauli, for entering the same in the births and deaths records.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for the registration of delayed date of birth of Smt. Nirmla Devi d/o Sh.

Radha Krishan, may submit their objections in writing in this court on or before 17-01-2025 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 17th day of December, 2024.

Seal.

Sd/-

*Executive Magistrate (Tehsildar),
Kasauli, District Solan (H. P.).*

In the court of Sub-Divisional Magistrate, Kandaghat, Distt. Solan, (H.P.)

In the matter of :

1. Sh. Pranshu Kapoor s/o Sh. Vijay Kapoor, r/o Near Housing Board Colony, Ward No. 2, Nagar Panchayat Kandaghat, P.O. & Tehsil Kandaghat, District Solan (H.P.).

2. Smt. Amisha Bariana d/o Sh. Manoj Bariana, r/o Near Shilli Road Near DC Residence, Ward No. 8, Solan, Tehsil and District Solan . . Applicants.

Versus

General Public

Notice for the registration of marriage under section 8(4) of H.P. Registration of Marriage Act, 1996.

Whereas, this office has received an application of the aforesaid applicants alongwith affidavits and Memorandum of marriage in which it has been stated that they have solemnized their marriage on 26-10-2023 at Shagun Palace Rajgarh Road Solan, District Solan, H.P. as per Hindu rites and customs. They are living as husband and wife ever since. They have further stated that they could not get their marriage registered well within time and as such they have requested that directions may be issued to the Secretary, Nagar Panchayat Kandaghat to enter their marriage in the marriage register.

Keeping in view the above and the provision of section 8(4) of the H.P. Registration of Marriages Act, 1996 general public is hereby informed by this notice that any person who has any objection with respect to the aforesaid marriage registration, can file the objection in this Court on or before 19-02-2025. The objections received after 19-02-2025 will not be entertained and necessary action will be taken accordingly.

Issued under my hand and seal of this court on this 18th day of January, 2025.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Kandaghat, District Solan (H.P.).*

**In the Court of Shri Jagdish Sharma, Executive Magistrate –cum-(Naib-Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Dwarku Devi d/o Shri Tholkia Ram, permanent r/o Village Rano, Post Office Deothi & Tehsil & District Solan (H.P.) . . Applicant.

Versus

General Public

. .Respondent.

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Dwarku Devi d/o Shri Tholkia Ram, permanent r/o Village Rano, Post Office Deothi & Tehsil & District Solan (H.P.) has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavit and other relevant documents for entering her date of birth *i.e.* 10-07-1979 and place of birth is at r/o Village Rano, P.O. Deothi, Tehsil & District Solan (H.P.), but her date of birth could not be entered in the record of Gram Panchayat Deothi, Tehsil & Distt. Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Dwarku Devi d/o Shri Tholkia Ram & Smt. Kanta may submit their objection in writing or appear in person in this court on or before 21-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 20th day of January, 2025.

Seal.

Sd/-
(JAGDISH SHARMA),
*Executive Magistrate-cum-(Naib-Tehsildar),
Solan, District Solan (H. P.).*

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Neha Verma d/o Shri Ramesh Chand, permanent r/o Village Shinger, Post Office Jaunaji, Tehsil & District Solan (H.P.) . .Applicant.

Versus

General Public

. .Respondent.

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Neha Verma d/o Shri Ramesh Chand, permanent r/o Village Shinger, Post Office Jaunaji, Tehsil & District Solan (H.P.) has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavit and other relevant documents for

entering her date of birth *i.e.* 19-07-1993 and place of birth is at r/o Village Shinger, P.O. Jaunaji, Tehsil & District Solan (H.P.), but her date of birth could not be entered in the record of Gram Panchayat Mashiwar, Tehsil & Distt. Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Neha Verma d/o Shri Ramesh Chand permanent r/o Village Shinger, Post Office Jaunaji, Tehsil & District Solan (H.P.) may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Poonam Thapa d/o Shri Sher Singh, permanent r/o Village Chhistuna (Chalfuk), Post Office Harineta, Ward No. 4, District Gulami, West Nepal . .*Applicant.*

Versus

General Public . .*Respondent.*

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Poonam Thapa d/o Shri Sher Singh, permanent r/o Village Chhistuna (Chalfuk), Post Office Harineta, Ward No. 4, District Gulami, West Nepal has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavit and other relevant documents for entering her date of birth *i.e.* 08-08-1981 and place of birth is at r/o Village & P.O. Basal, Tehsil & District Solan (H.P.), but her date of birth could not be entered in the record of Gram Panchayat Basal, Tehsil & Distt. Solan.

Now therefore, by this proclamation the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Poonam Thapa d/o Shri Sher Singh & Smt. Seema Devi may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Biro Devi d/o Sh. Poonu Ram, w/o Sh. Pyare Lal, r/o Village Majhlori (378), Post Office Kujji, Tehsil Pachhad, District Sirmaur (H.P.)-173229 . .Applicant.

Versus

General Public

. .Respondent.

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Biro Devi d/o Sh. Poonu Ram, w/o Sh. Pyare Lal, r/o Village Majhlori (378), Post Office Kujji, Tehsil Pachhad, District Sirmaur (H.P.)-173229 has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering her date of birth *i.e.* 05-09-1971 and place of birth is at r/o Village Ghumarda & P.O. Kabakalan, Tehsil & District Solan (H.P.), but her date of birth could not be entered in the record of Gram Panchayat Kabakalan, Tehsil & Distt. Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Biro Devi d/o Shri Poonu Ram may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Reena Devi d/o Sh. Ram Dayal w/o Sh. Kishan Chand, r/o Village Kotla Panjola,
Tehsil Pachhad, District Sirmaur (H.P.)-173223 . .Applicant.

Versus

General Public . .Respondent.

*Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and
Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.*

PROCLAMATION

Whereas, the applicant Smt. Reena Devi d/o Sh. Ram Dayal w/o Sh. Kishan Chand, r/o Village Kotla Panjola, Tehsil Pachhad, District Sirmaur (H.P.)-173223 has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering her date of birth *i.e.* 12-09-1985 and place of birth is at r/o Village Jalyana & P.O. Bhojnagar, Tehsil & District Solan (H.P.), but her date of birth could not be entered in the record of Gram Panchayat Bhojnagar, Tehsil & District Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Reena Devi d/o Shri Ram Dayal w/o Shri Kishan Chand may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Sushma d/o Sh. Shobha Ram, resident of Village Dhako, P.O. Oachhghat, Tehsil &
District Solan (H.P.) w/o Sh. Ramesh Chand, r/o Village Kahan, P.O. Narag, Tehsil Pachhad,
District Sirmaur (H.P.)-173223 . .Applicant.

Versus

General Public . .Respondent.

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Sushma d/o Sh. Shobha Ram, resident of Village Dhako, P.O. Oachhghat, Tehsil & District Solan (H.P.) w/o Sh. Ramesh Chand, r/o Village Kahan, P.O. Narag, Tehsil Pachhad, District Sirmaur (H.P.) has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering her date of birth *i.e.* 07-01-1968 and place of birth is at r/o Village Dhako, & P.O. Oachhghat, Tehsil & District Solan (H.P.) but her date of birth could not be entered in the record of Gram Panchayat Shamror, Tehsil & District Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Sushma d/o Shri Shobha Ram and w/o Shri Ramesh Chand may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Shri Purna Bahadur Yari s/o Shri Harka Bahadur Yari, permanent r/o Village Kapurkot,
Ward No. 4, District Salyan, NEPAL . . . *Applicant.*

Versus

General Public

. . . *Respondent.*

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Shri Purna Bahadur Yari s/o Shri Harka Bahadur Yari, permanent r/o Village Kapurkot, Ward No. 4, District Salyan, NEPAL has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering his date of birth *i.e.* 20-08-1993 and place of birth is at r/o Village & P.O. Sultanpur,

Tehsil & District Solan (H.P.) but his date of birth could not be entered in the record of Gram Panchayat Sultanpur, Tehsil & District Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Shri Purna Bahadur Yari s/o Shri Harka Bahadur Yari & Smt. Ammi Kumari Yari may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Khema Devi w/o Sh. Hem Raj, r/o Village Kalth, P.O. Bhojnagar, Tehsil Kasauli,
District Solan (H.P.)-173229 . .Applicant.

Versus

General Public . .Respondent.

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Khema Devi w/o Sh. Hem Raj, r/o Village Kalth, P.O. Bhojnagar, Tehsil Kasauli, District Solan (H.P.) has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering her date of birth *i.e.* 01-07-1974 and place of birth is at r/o Village Koti, & P.O. Bohli, Tehsil & District Solan (H.P.) but her date of birth could not be entered in the record of Gram Panchayat Anhech, Tehsil & District Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Khema Devi d/o Shri Puran Dass & Smt. Parwati may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Smt. Sita Devi d/o Sh. Ram Singh, permanent r/o Nagar Palika-5, Kuwapata Libag, District Rolpa, NEPAL . .*Applicant.*

Versus

General Public

. .*Respondent.*

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Smt. Sita Devi d/o Sh. Ram Singh, permanent r/o Nagar Palika-5, Kuwapata Libag, District Rolpa, NEPAL has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering her date of birth *i.e.* 15-01-1979 and place of birth is at r/o Village Molon Kalaghat, Government quarter of Forest Department & P.O. Solan, Tehsil & District Solan (H.P.), but her date of birth could not be entered in the record of Gram Panchayat Seri, Tehsil & District Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Sita Devi d/o Shri Ram Singh & Smt. Sheetal Devi may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Shri Multan Singh Banyal, Executive Magistrate –cum-(Tehsildar) Solan,
District Solan (H. P.)**

In the matter of :

Shri Nirajan Pun son of Shri Bir Bahadur Pun, permanent r/o Village Sisne, Ward No. 04,
District Rukum, (East Part) NEPAL . . . *Applicant.*

Versus

General Public . . . *Respondent.*

Subject.—Regarding delayed Registration of Birth and Death under section 13(3) of Birth and Death Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003.

PROCLAMATION

Whereas, the applicant Shri Nirajan Pun son of Shri Bir Bahadur Pun, permanent r/o Village Sisne, Ward No. 04, District Rukum, (East Part) Nepal has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 and Section 9(3) of H.P. Birth & Death Registration Rules, 2003 alongwith affidavits and other relevant documents for entering his date of birth *i.e.* 24-05-2005 and place of birth is at r/o Village & P.O. Sultanpur, Tehsil & District Solan (H.P.), but his date of birth could not be entered in the record of Gram Panchayat Sultanpur, Tehsil & District Solan.

Now therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Shri Nirajan Pun son of Shri Bir Bahadur Pun & Smt. Deosari Pun may submit their objection in writing or appear in person in this court on or before 10-02-2025 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 9th day of January, 2025.

Seal.

Sd/-
(MULTAN SINGH BANYAL),
Executive Magistrate-cum-Tehsildar,
Solan, District Solan (H. P.).

**In the Court of Dr. Poonam, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Solan, Tehsil & District Solan (H.P.)**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT

Whereas, Mr. Ashish Kumar, son of Lt. Sh. Satya Prakash, resident of House No. 273A, Lower Bazar Subathu, Tehsil and District Solan (H.P.) and Mrs. Harpreet Kaur, daughter of Paramjeet Singh and wife of Mr. Ashish Kumar, son of Lt. Sh. Satya Prakash, resident of House No. 273A, Lower Bazar Subathu, Tehsil and District Solan (H.P.) have filed an application for the registration of their marriage which was solemnized on 22-05-2011 and they have been living as husband and wife ever since then.

And whereas both applicants have submitted in their application and in their affidavits that Mr. Ashish Kumar and Mrs. Harpreet Kaur were unmarried at the time of solemnization of their marriage and were major in age and having no prohibited relations to each other, debarring them to marry each other. Both the applicants have requested for registration of their marriage.

Notices have been served to all concerned and General Public to this effect that if anybody has got any objection regarding the registration of marriage duly solemnized between the above parties *i.e.* Mr. Ashish Kumar, son of Lt. Sh. Satya Prakash, resident of House No. 273A, Lower Bazar Subathu, Tehsil and District Solan (H.P.) and Mrs. Harpreet Kaur, daughter of Paramjeet Singh and wife of Mr. Ashish Kumar, son of Lt. Sh. Satya Prakash, resident of House No. 273A, Lower Bazar Subathu, Tehsil and District Solan (H.P.) they may file their written objections and appear personally or through their authorized agents before me within a period of thirty days from the date of issuance of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court, post which no objection will be heard or accepted.

Issued under my hand and seal of the court on this 06th day of January, 2025.

Seal.

Dr. POONAM, HPAS,
*Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).*

**In the Court of Dr. Poonam, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Solan, Tehsil & District Solan (H.P.)**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT

Whereas, Mr. Puneet, son of Mr. Madan Lal, resident of House No. 9, Near Bus Stand, Subathu, Tehsil and District Solan (H.P.) and Mrs. Ruby, wife of Mr. Puneet and daughter of Mr. Ram Nath, resident of House No. 395/B, Railway colony, Tehsil Kalka, Panchkula, Haryana-133302, have filed an application for the registration of their marriage, which was solemnized on 29-11-2023 and they have been living as husband and wife ever since then.

And whereas both applicants have submitted in their application and in their affidavits that Mr. Puneet and Mrs. Ruby were unmarried at the time of solemnization of their marriage and were major in age and having no prohibited relations to each other, debarring them to marry each other. Both the applicants have requested for registration of their marriage.

Notices have been served to all concerned and General Public to this effect that if anybody has got any objection regarding the registration of marriage duly solemnized between the above parties *i.e.* Mr. Puneet, son of Mr. Madan Lal, resident of House No. 9, Near Bus Stand, Subathu, Tehsil and District Solan (H.P.) and Mrs. Ruby, wife of Mr. Puneet and daughter of Mr. Ram Nath, resident of House No. 395/B, Railway colony, Tehsil Kalka, Panchkula, Haryana-133302, they may file their written objections and appear personally or through their authorized agents before me within a period of thirty days from the date of issuance of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court, post which no objection will be heard or accepted.

Issued under my hand and seal of the court on this 10th day of January, 2025.

Seal.

Dr. POONAM, HPAS,
*Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).*

**In the Court of Dr. Poonam, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Solan, Tehsil & District Solan (H.P.)**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT

Whereas, Mr. Shobhik Chauhan son of Mr. Hardev Singh Chauhan, resident of House No. 359/12, Bansal Cottage, The Mall Solan, Tehsil and District Solan (H.P.) and Mrs. Lekha Kriti Sharma, wife of Mr. Shobhik Chauhan and daughter of Mr. Sukh Dev Sharma, resident of # 615, Ward No. 12, Amit Apartments, Solan, Tehsil and District Solan, (H.P.) have filed an application for the registration of their marriage which was solemnized on 04-12-2024 and they have been living as husband and wife ever since then.

And whereas both applicants have submitted in their application and in their affidavits that Mr. Shobhik Chauhan and Mrs. Lekha Kriti Sharma were unmarried at the time of solemnization of their marriage and were major in age and having no prohibited relations to each other, debarring them to marry each other. Both the applicants have requested for registration of their marriage.

Notices have been served to all concerned and General Public to this effect that if anybody has got any objection regarding the registration of marriage duly solemnized between the above parties *i.e.* Mr. Shobhik Chauhan son of Mr. Hardev Singh Chauhan, resident of House No. 359/12, Bansal Cottage, The Mall Solan, Tehsil and District Solan (H.P.) and Mrs. Lekha Kriti Sharma, wife of Mr. Shobhik Chauhan and daughter of Mr. Sukh Dev Sharma, resident of # 615, Ward No. 12, Amit Apartments, Solan, Tehsil and District Solan, (H.P.) they may file their written objections and appear personally or through their authorized agents before me within a period of thirty days from the date of issuance of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court, post which no objection will be heard or accepted.

Issued under my hand and seal of the court on this 14th day of January, 2025.

Seal.

Dr. POONAM, HPAS,
*Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).*

CHANGE OF NAME

I, Chain Singh s/o Prem Dass, r/o Village Jathyan, P.O. Nayagram, Tehsil Kasauli, District Solan (H.P.) have changed my minor daughter's name from Jayoti to Jyoti.

CHAIN SINGH
*s/o Prem Dass,
r/o Village Jathyan, P.O. Nayagram,
Tehsil Kasauli, District Solan (H.P.).*

CHANGE OF NAME

I, Chain Singh s/o Prem Dass, r/o Village Jathyan, P.O. Nayagram, Tehsil Kasuli, District Solan (H.P.) have changed my minor son's name from Jeetender to Jitender Batoy.

CHAIN SINGH
s/o Prem Dass,
r/o Village Jathyan, P.O. Nayagram,
Tehsil Kasuli, District Solan (H.P.) .

CHANGE OF NAME

I, Salochana w/o Amit Kumar, r/o Village Bhamnoli, P.O. Summerkot, Tehsil Rohru, District Shimla (H.P.) declare that the name of my son Pratyush Bhardwaj is wrongly mentioned as Siddhit Sharma in the Aadhar Card. Therefore it should be changed to Pratyush Bhardwaj in his Aadhar Card.

SALOCHANA
w/o Amit Kumar,
r/o Village Bhamnoli, P.O. Summerkot,
Tehsil Rohru, District Shimla (H.P.).

CHANGE OF NAME

I, Gurumehar s/o Prem Dayal, r/o Ward No. 9, Basdehra Mehatpur, P.O. Mehatpur, District Una (H.P.) declare that I have changed my son's name from Paaras Satsangi to Paras Thakur. Paaras Satsangi and Paras Thakur are the names of one and same person. All concerned please note.

GURUMEHAR
s/o Prem Dayal,
r/o Ward No. 9, Basdehra Mehatpur,
P.O. Mehatpur, District Una (H.P.).

CHANGE OF NAME

I, Sunil Kumar (41) s/o Sh. Puni Chand, r/o Village & P.O. Nanaon Khas, Sub-Tehsil Sullah, District Kangra (H.P.) declare that in Aadhar Card my son's name wrongly entered as Vansh Rana. In my son's birth record his name is Vansh Parmar. Correct name of my son is Vansh Parmar.

SUNIL KUMAR
s/o Sh. Puni Chand,
r/o Village & P.O. Nanaon Khas,
Sub-Tehsil Sullah, District Kangra (H.P.).

CHANGE OF NAME

I, Diwan Chand age 37 years s/o Sh. Chhangu Ram, r/o Village Chakdoh, P.O. Jhangi, Tehsil Sandhole, District Mandi (H.P.) declare that my daughter's name wrongly entered in Aadhar Card as Ridhika. Now I have changed her name from Ridhika (Previous Name) to Radhika (New Name). All concerned please may note.

DIWAN CHAND
s/o Sh. Chhangu Ram,
r/o Village Chakdoh, P.O. Jhangi,
Tehsil Sandhole, District Mandi (H.P.).

CHANGE OF NAME

I, Diksha Kumari d/o Sh. Sanjay Kumar Anand, r/o House No. 506, Phase-3, New Nalagarh, P.O. & Tehsil Nalagarh, District Solan (H.P.) declare that the correct name of my father is Sanjay Kumar Anand & my mother is Meenu Bala Mahajan, as per their authorised documents Aadhar/School Certificate. The names of my parents have been correctly written in my Aadhar, Birth Certificate and Class XII Certificate but incorrect in Class X Certificate. I intend to enter the correct name of my parents in my Class X Certificate as father name Sanjay Kumar Anand and mother name Meenu Bala Mahajan.

DIKSHA KUMARI
d/o Sh. Sanjay Kumar Anand,
r/o House No. 506, Phase-3, New Nalagarh,
P.O. & Tehsil Nalagarh, District Solan (H.P.).

CHANGE OF NAME

I, Taruna Sharma w/o Jitender Sharma, r/o Near Petrol Pump, Village Bara, P.O. Kumar Hatti, Tehsil & District Solan (H.P.) have changed my name from Taruna Sharma to Kumari Taruna.

TARUNA SHARMA
w/o Jitender Sharma,
r/o Near Petrol Pump, Village Bara,
P.O. Kumar Hatti, Tehsil & District Solan (H.P.).

CHANGE OF NAME

I, Aman Deep Kaur w/o Mukesh Kumar, r/o Village Jadli P.O. Brawri, Tehsil & District Solan (H.P.) have changed my name from Aman Deep Kaur to Champa Devi.

AMAN DEEP KAUR
w/o Mukesh Kumar,
r/o Village Jadli P.O. Brawri,
Tehsil & District Solan (H.P.).

CHANGE OF NAME

I, Neha Rani w/o Ashok Kumar, r/o Village & P.O. Garkhal, Tehsil Kasauli, District Solan (H.P.) have changed my minor son's name from Harsh Sharma to Krish Sharma.

NEHA RANI
w/o Ashok Kumar,
r/o Village & P.O. Garkhal,
Tehsil Kasauli, District Solan (H.P.).

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA
Vidyut Aayog Bhawan, Block-37, SDA Complex, Kasumpti, Shimla-171009

NOTIFICATION

Shimla, the 29th January, 2025

No. HPERC-B(3)-1/2020-705-Vol-VII.—In exercise of the powers conferred by clauses (zj) and (zk) of sub-section (2) of section 181 and sub-sections (2) and (3) of section 91 of the Electricity Act, 2003 (Act No. 36 of 2003) read with section 21 of the General Clauses Act, 1897 (10 of 1897) and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission after prior publication and in consultation to the State Government makes the following Regulations further to amend the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) Regulations, 2013, namely:—

1. Short title and commencement.—(1) These Regulations may be called the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) (Fourth Amendment) Regulations, 2025.

(2) These Regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Regulation 7.—In Regulation 7 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) Regulations, 2013 (hereinafter referred to as the 'Principal Regulations'), for sub-regulation (2), the following sub-regulation shall be substituted, namely:—

“(2) The regular employees of the Commission covered under the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 (known as New Pension Scheme), and opted to the Central Civil Services (Pension) Rules, 1972 (known as Old Pension Scheme), in pursuant to the State Government Office Memorandum No. Fin.(Pen.)A(3)-1/2023 dated 4th May, 2023, shall be entitled to the pension *w.e.f.* 01-04-2023 under the Central Civil Services (Pension) Rules, 1972, subject to the fulfilment of eligibility and other conditions specified under the said Pension Rules and State Government Office Memorandum dated 4th May, 2023:

Provided that the employees of the Commission retired/died between the period 15-05-2003 to 31-03-2023 and have already availed pensionary benefits under the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 (known as New Pension Scheme), and opted to the Central Civil Services (Pension) Rules, 1972 (known as Old Pension Scheme) in pursuant to the State Government Office Memorandum No.

Fin(Pen.) 4(3)-1/2023 dated 4th May, 2023 and have deposited the employer's share and dividend/return with the Commission shall be entitled to the pension *w.e.f.* 01-04-2023 subject to fulfilment of eligibility criteria under the C.C.S. (Pension) Rules, 1972 and the State Government Office Memorandum dated 04th May, 2023.”.

3. Amendment of Schedule-I.—In Schedule-I appended to the Principal Regulations,—

(i) In part-I, for Sr. No. 3, the following shall be substituted, namely:—

3.	Legal	4	Deputy Director (Law)	1	15600-39100+6600/-	10025-15100
			Assistant Registrar (Judicial)	1	15600-39100+6600/-	
			Reader	1	10300-34800+5000/-	7220-11660
			Law Officer	1	10300-34800+4200/-	6400-10640

(ii) For part-II, the following shall be substituted, namely:—

Part-II Staff						
Sr. No.	Nature of posts	Posts sanctioned	Designation	No. of posts	Pay band and Grade Pay	Pre-revised scale (Pre 2006)
5.	Ministerial	11	Personnel-cum-Administrative Officer	1	10300-34800+5400	7880-11660
			Superintendent	1	10300-34800+4200	6400-10640
			Assistant Programmer	1	10300-34800+4200	
			Senior Assistant	2	10300-34800+3800/-	5800-9200
			Record Keeper	1	10300-34800+3800/-	5800-9200
			Junior Office Assistant (I.T.)	2		
			Clerk	3	5910-20200+1900	3120-5160
6.	Secretarial	12	Senior Private Secretary	1	15600-39100+ 6600	10025-15100
			Private Secretary	1	15600-39100+ 5400	
			PA-cum-Judgment writer	1	10300-34800+ 4800	
			Personal Assistant	4	10300-34800+ 4200	6400-10640
			Sr. Scale Stenographer	2	10300-34800+ 3800	5800-9200
			Steno Typist	3	5910-20200+ 2000	3330-6200
7.	Support Staff	16	Driver	7	5910-20200+ 2000	3330-6200
			Peon	9	4900-10680+ 1300	2520-4140

Note.—(1) The categorization of posts and number of posts shall be such as are amended by the Commission, from time to time, within the overall strength with the approval of the State Government.

(2) Pay scale/band and grade pay as allowed to the Officers and Employees of the Commission at the time of absorption with the approval of the State Govt. shall remain protected as measure personal to them till vacation of such posts by them.

(3) The above posts have been created by the Himachal Pradesh Government from time to time *vide* their letters as detailed below:—

- | | |
|---|---------|
| 1. MPP-B(1)-2/2000 dated 09.05.2001 | 30 post |
| 2. MPP-C(1)-1/2000 (Loose) dated 12.08.2002 | 01 " |
| 3. MP-A(4)-5/2005 dated 08.03.2006 | 06 " |
| 4. MPP-A(1)-3/2006 dated 03.08.2007 | 09 " |
| 5. MPP-(B)(1)-2/2000-Pt dated 04.02.2012 | |
| 6. MPP-B(15)-1/2014-Loose dated 30.10.2018 | 03 " |
| 7. MPP-MPP-A(3)-2/2003-I dated 16.05.2020 | 06 " |

Down gradation of two posts of Personal Asstt. and one post of Sr. Scale Steno to that of 3 posts of Steno Typist and one post each of Sr. Asstt. and Record Keeper and one post of Computer Operator to that of three Posts of Clerks
(Overall number remained the same)

4. Amendment of Schedule-II.—In Schedule-II appended to the Principal Regulations,—

(A) In Part-I—

(i) in the Heading, after the words “FOR APPOINTMENT”, the words “BY DIRECT RECRUITMENT OR” shall be inserted;

(ii) after Sr. No. 5, the following Sr. No. 5-A shall be inserted, namely:—

“5(A)	Assistant Registrar (Judicial)	By promotion from amongst the Personnel- <i>cum</i> -Administrative Officer and Law Officer, possessing professional Degree in Law from a recognized University with 3 years regular service or regular combined with continuous <i>ad hoc</i> service or service rendered in the regulatory affairs of power sector, if any, in the grade and in the case of Law Officer, 9 years service on merit- <i>cum</i> -seniority basis; failing which on secondment basis, from amongst the persons holding equivalent post and possessing above specified educational qualification or from amongst Section Officers or Superintendents Grade-I or its equivalent having 6 years service experience of the post or in regulatory matters and possessing above specified educational qualification; Failing both, on re-employment basis from amongst persons who retired from analogous post and above levels or having more than 10 years experience in regulatory affairs and out of which more than 6 years service as Reader or above levels and possessing above specified educational qualification.
--------------	---------------------------------------	---

(iii) after Sr. No. 10, the following Sr. No. 10-A shall be inserted, namely:—

“10-A	Assistant Programmer	By direct recruitment through H.P. Public Service Commission on contract or regular basis from amongst persons who possess Bachelor Degree in Computer Science or Electronics Engineering with specialization in computer programming or M.Sc. in Computer Science or MCA or its equivalent from a recognized University; failing which on secondment basis from amongst the persons holding equivalent post; failing both on outsource basis from amongst the persons possessing experience of atleast 12 years and above in Information Technology field in Government or Corporate Sector.
--------------	-----------------------------	---

(B) In Part-II,-

(i) after Sr. No. 7, the following Sr. No. 7-A shall be inserted, namely:—

“7-A	Personal Assistant-cum-Judgment Writer	By promotion from amongst Senior Scale Stenographers having 6 years regular service or regular combined with continuous <i>adhoc</i> service or in the regulatory affairs of power sector rendered, if any, in the grade.
-------------	---	---

(ii) for Sr. No. 8 the following shall be substituted, namely:—

“8	Senior Private Secretary	The post of Sr. Private Secretary may be utilised temporarily in the rank and name of Private Secretary, Rs. 15600-39100 + 5400 GP, the level next higher to Personal Assistant, and may be filled up by promotion from amongst Personal Assistants having 5 years service as such and further having graduation degree. The post of Senior Private Secretary may be restored to its sanctioned pay band and grade pay, to be filled up by promotion from Private Secretary having 3 years of service as such and further having graduation degree.
8-A	Private Secretary	By promotion from amongst the Personal Assistant(s) and P.A.-cum-Judgment Writer possessing 05(five) years regular service or regular combined with continuous <i>adhoc</i> service, if any, in the grade; failing which by promotion from amongst the Personal Assistant(s) possessing 14 (fourteen) years regular service or regular combined with continuous <i>adhoc</i> service, if any, as Personal Assistant and Senior Scale Stenographer combined which shall also include 02 (two) years essential service as Personal Assistant; failing both, by promotion from amongst the Personal Assistant(s) possessing 19 (nineteen) years regular

		service or regular combined with continuous <i>adhoc</i> service, if any, as Personal Assistant, Senior Scale Stenographer and Junior Scale Stenographer combined which shall also include 02 (two) years essential service as Personal Assistant; failing all, by promotion from amongst the Personal Assistant(s) possessing 24 (twenty four) years regular service or regular combined with continuous <i>adhoc</i> service, if any, as Personal Assistant, Senior Scale Stenographer, Junior Scale Stenographer and Steno Typist combined which shall also include 02 (two) years essential service as Personal Assistant.
--	--	--

(iii) after Sr. No. 9-A, the following Sr. No. 9-B shall be inserted, namely:—

“9-B.	Assistant Registrar (Judicial)	By promotion from amongst the Personnel- <i>cum</i> -Administrative Officer and Law Officer, possessing professional Degree in Law from a recognized University with 3 years regular service or regular combined with continuous <i>adhoc</i> service or service rendered in the regulatory affairs of power sector, if any, in the grade and in the case of Law Officer, 9 years regular or regular combined with continuous <i>adhoc</i> service on merit- <i>cum</i> -seniority basis”.
--------------	---------------------------------------	--

(C) In part-III, in clause (2), sub-clause (iv) shall be omitted.

By the order of the Commission,

Sd/-
Secretary.

REVENUE DEPARTMENT

NOTIFICATION

Shimla-2, the 31st January, 2025

No. REV-B-A(03)/28/2024.—In exercise of powers conferred by Clause (b) of section 47 of the H.P Land Revenue Act, 1954, (in short as Act) the Financial Commissioner (Revenue) to the Government of H.P proposes to amend the format of Jamabandi for maintaining the Record of Rights. The proposed format of Jamabandi is hereby published as per the requirement of section 169 of the Act for general information of the public;

If any person likely to be effected by this amendment in the format of Jamabandi has any objection (s) or suggestion (s) to make in respect of this format, he may send the same to the Financial Commissioner (Revenue) to the Government of Himachal Pradesh, shimla-171002 within a period of seven days from the date of publication of this in Rajpatra (e-Gazette) Himachal Pradesh;

Objection (s) or suggestion (s), if any, received within the period specified above, shall be considered by the Financial Commissioner before finalizing this format, namely:—

Draft Notification

In exercise of powers conferred by Clause (b) of section 47 of the H.P Land Revenue Act, 1954, (in short as Act) the Financial Commissioner (Revenue) to the Government of H.P. prescribe the format of Jamabandi for maintaining the Record of Rights as follows.

Proposed Format (In Hindi)

राजस्व गांव (हदबस्त नम्बर) -	पटवारवृत्त .	कानूनगो वृत्त -	तहसील/ उप तहसील-	जिला	हिमाचल प्रदेश	क्षेत्रफल ईकाई	जमाबन्दी वर्ष-		
पत्ति सहित नम्बरदार का नाम :									
खाता नम्बर	खतौनी नम्बर	मालिक का पूर्ण विवरण	काश्तकार/कब्जाधा रक का पूर्ण विवरण	सिंचाई का साधन	खसरा नम्बर पुराना नया (यु-एल- पी-एन सहित)	भूमि की किस्म व क्षेत्रफल	मुजारा द्वारा अदा किये जाने वाले लगान का विवरण	खाते पर लगने वाले भू राजस्व (मामला) एवं स्वाई का विवरण	
1	2	3	4	5	6	7	8	9	10
विवरण/ कैफियत									

Proposed Format (In English)

Revenue Village (Hadbast No) -	Patwar Circle-	Kanungo Circle-	Tehsil/ Sub Tehsil-	District-	Himachal Pradesh	Area Unit-	Jamabandi Year -
-----------------------------------	----------------	--------------------	---------------------------	-----------	---------------------	------------	---------------------

Name and Patti wise Detail of Nambardar :									
Khata No.	Khatauni No.	Full Details of the Owner	Full Details of the Cultivator/ Occupant	Irrigation source	Khasra No.		Type of Land and Area	Detail of Rent to be paid by the tenant	Detail of Land Revenue and Cess leviable on the Khata
					Old	New (with ULPIN)			
1	2	3	4	5	6	7	8	9	10
Remarks									

By order,

ONKAR CHAND SHARMA,
Additional Chief Secretary (Revenue).